IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Bail Application No. S-263 of 2025

Applicant:	Muhammad Zaman @ Jameel *through* M/S Manzoor Hussain Larik and Wqaqr Ali Phulpoto, Advocates
Respondent:	The State, *through* Mr. Mansoor Ahmed Shaikh, Deputy Prosecutor General
Date of hearing:	14.7.2025
Date of decision:	17.7.2025

O R D E R

Muhammad Jaffer Raza, J.- Through captioned criminal bail application, Applicant Muhammad Zaman @ Jameel son of Roshan Ali, by caste Lashari, seeks post-arrest bail u/s 497 Cr.P.C r/w section 6 of the Juvenile Justice System Act, 2018 (**'The Act'**) in FIR No.18/2025, registered at Police Station Gambat, District Khairpur, for the offences punishable under Section 365-B and 511 PPC. He had earlier approached the learned Additional Sessions Judge-IV/Special/Gender Based Violence Court, Khairpur, with the same plea. However, the same was declined, vide order dated 18.3.2025.

2. The brief facts of the prosecution case are that the Complainant Shafiq Ahmed Khan registered FIR on 22.01.2025, alleging that his niece namely Aisha d/o Imdad Ali Khoso aged about 22 years is a medical student, residing at the girls' hostel of the college where she is enrolled. It was alleged that the Applicant was sending messages to the above named individual and thereafter the Applicant along with one unknown person armed with pistols, came on motorcycle and attempted to abduct the niece of the Complainant.

3. Learned counsel for the Applicant has argued that the Applicant is entitled for the concession of bail under the Act. He averred that Section 6 of the Act is applicable in his case as he was 15 years of age at the time of the alleged offence. Additionally, he has contended that the charge has not been framed and

the Applicant is in custody since 23.01.2025, hence he is entitled to concession of bail under Section 6(5) of the Act.

4. It has further been argued by the learned counsel for the Applicant that the Applicant is suffering from mental ailments which are reflected in the report furnished by the medical officer. He has specifically invited my attention to the extract taken from the register recorded by the Medical officer in his report dated 06.2.2205. According to him, the said report reflects that the Applicant has been diagnosed with "deliberate self-harm behavior" and "border line personality disorder".

5. On merits, it has been contended by the learned counsel for the Applicant that there is a delay of approximately three days in lodging of the said FIR. Further he has argued that no statement u/s 164 Cr.P.C has been recorded of Mst. Aisha and neither has any recovery been made from the Applicant.

6. Conversely, learned APG has vehemently opposed the contentions advanced by the learned counsel for the Applicant. He has argued that the offence, as alleged, falls under the prohibitory clause of section 497 Cr.P.C and the text messages (which have been placed before me), are sufficient to connect the Applicant with the commission of the offence. In reference to the provisions of the Act, he has stated that the concession of bail cannot be granted to an Applicant who is guilty of a heinous offence. He has therefore prayed for dismissal of the bail application.

7. The instant bail was taken up for hearing on 25.03.2025 whereby notices were issued to the prosecution as well as the Complainant. Thereafter, the Complainant was served repeatedly but no adequate representation was made before this court. Subsequently, vide order dated 26.6.2025 notices were repeated on the Complainant with the observation that if the Complainant does not appear the matter will be heard and decided with the material available on record.

Thereafter on 07.07.2025 the Complainant appeared in person and sought time to engage a counsel and the matter was adjourned for 10.7.2025. On the said date the matter was part-heard and the same subsequently came up for hearing on 14.07.2025. On both dates the Complainant chose to remain absent. It also noted that on 10.07.2025 notices were again repeated on the Complainant for 14.7.2025. However, as noted above, no appearance was made.

8. I have heard the learned counsel for the Applicant and the learned APG and perused the record available before me.

9. The adjudication of the instant bail application will involve interpretation of relevant provisions of the Act. It is not denied that the Applicant is a juvenile under the provisions of the Act and has been incarcerated for over six months. In this regard Section 6 of the Act is relevant and the same is reproduced below:-

> *6. Release of a juvenile on bail. ---*
>
> *(1) Notwithstanding anything contained in the Code, a juvenile accused of bailable offence shall, if already not released under section 496 of the Code, be released by the Juvenile Court on bail with or without surety unless it appears that there are reasonable grounds for believing that the release of such juvenile may bring him in association with criminals or expose him to any other danger. In this situation the juvenile shall be placed under the custody of a suitable person or Juvenile Rehabilitation Centre under the supervision of probation officer. The juvenile shall not under any circumstances be kept in a police station under police custody or jail in such cases.*
>
> *(2) The Juvenile Court shall, in a case where a juvenile is not released under subsection (1), direct the police for tracing guardian of such juvenile and where guardian of such juvenile is traced out, the Juvenile Court may immediately handover custody of the juvenile to his guardian.*
>
> *(3) Where a juvenile is arrested or detained for commission of a minor or a major offence for the purposes of this Act, he shall be treated as if he was accused of commission of a bailable offence.*
>
> *(4) Where a juvenile of more than sixteen years of age is arrested or detained for a heinous offence, he may not be released on bail if the Juvenile Court is of the opinion that there are reasonable grounds to believe that such juvenile is involved in commission of a heinous offence.*

(5) Where the Juvenile Court is of the opinion that the delay in the trial of a juvenile has not been occasioned by an act or omission of such juvenile or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, such juvenile shall be released on bail if he has been detained for a continues period exceeding six months and whose trial has not been completed.

10. The provisions of the Act, and more specifically the section noted above, was interpreted and expounded in the case ***of Mehran versus Ubaid Ullah and others***[1] wherein the Hon'ble Supreme Court held as under:-

"7. In Pakistan, the juvenile justice system finds its ideological roots in the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). Article 25(3) of the Constitution empowers the State to make special provisions for the protection of children, even if such protection discriminates against adults. Furthermore, Article 35 of the Constitution mandates that the State shall protect children. As a signatory to the United Nations Convention on the Rights of the Child ("UNCRC"), Pakistan is also under international obligation to take special measures for the protection and rehabilitation of juveniles who come into conflict with the law. It is this international obligation, coupled with Pakistan's compliance with its constitutional mandate that formed the impetus behind the enactment of the juvenile justice system.

8. The main objective of the 2018 Act is to modify and amend the law relating to the criminal justice system for juveniles, with a special focus on disposing of their cases through diversion and socially reintegrating with the 'best interest of the child' principle as a primary consideration. This approach, rooted in therapeutic jurisprudence, forms the foundation of the juvenile justice system. Therapeutic jurisprudence, as defined by David B. Wexler,[7] involves 'the use of social science to study the extent to which a legal rule or practice promotes the psychological or physical well-being of the people it affects.' It offers an interdisciplinary perspective with a problem-solving approach that views the law itself as a potential therapeutic agent. Therapeutic jurisprudence forms the bedrock of the juvenile justice system, integrating the societal responsibilities of sanction and rehabilitation in line with the principles of rehabilitative and restorative justice. This holistic framework ensures that the juvenile justice system not only addresses legal accountability but also prioritizes the well-being and developmental needs of juvenile offenders. Juvenile justice also falls under the rubric of child justice. While juvenile justice is more narrowly focused on dealing with crimes, including aspects of both punishment and rehabilitation, child justice is more encompassing, aiming to protect and uphold the rights and best interests of all children involved in the legal system. Child justice is also centered around the idea that children, due to their age and maturity, should not be dealt with in the same manner as adults within the legal system. It emphasizes rehabilitation and education, rather than punishment, recognizing the potential for growth and change in young individuals. Both child and juvenile justice systems are shaped by international conventions like the

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[1] PLD 2024 Supreme Court 843

UNCRC, which provides a broad framework and standards for the treatment of children within judicial systems worldwide.

9. With this understanding of the juvenile justice system, we approach and address the bail matter of a juvenile in the instant case. Since the bail matter of the petitioner, a juvenile accused of committing a 'heinous offence', is to be dealt with under subsections (4) and (5) of Section 6 of the 2018 Act, the provisions thereof are cited here for ready reference……..

A bare reading of the above provisions shows that Section 6(4) of the 2018 Act provides that where a juvenile of more than sixteen years of age is arrested or detained for a heinous offence, he may not be released on bail if the Juvenile Court is of the opinion that there are reasonable grounds to believe that such juvenile is involved in the commission of a heinous offence. <u>While, Section 6(5) of the 2018 Act provides that any juvenile who has been detained for a continuous period exceeding six months and whose trial has not been completed shall be released on bail, provided that the delay in the conclusion of the trial has not been occasioned by an act or omission of such juvenile.</u>

<u>10. It is thus evident that while Section 6(4) deals with the matter of bail on merits, while Section 6(5) provides for a distinct and separate ground of bail, namely, the delay in the conclusion of the trial of the juvenile. It is also important to underline that since both 'minor offence' and 'major offence' are treated as bailable under Section 6(3), the ground of delay in the conclusion of the trial provided by Section 6(5) for grant of bail applies solely to juveniles detained for a 'heinous offence'. Therefore, post-arrest bail is to be granted as a matter of right to a juvenile detained for a heinous offence, regardless of his age, whether above or below sixteen years, provided the prerequisites of Section 6(5) are fulfilled.</u>

11. The 2018 Act is a beneficial legislation that favors juvenile offenders. It not only reduces the period for granting bail on the statutory ground of trial delay for juveniles detained pending trial under the previous law, i.e., the Juvenile Justice System Ordinance, 2000 ("2000 Ordinance"), from one year to six months but also removes the disqualification of having a previous criminal record for bail on this ground. <u>Unlike the 2000 Ordinance or Section 497 of the Criminal Procedure Code, 1898, the 2018 Act does not impose any other statutory disqualifications for granting bail to juveniles on the ground of delay in the conclusion of the trial. The subsequent ameliorative and benevolent legislation, i.e., the 2018 Act, reflects the legislature's intent to ensure that the trial of a juvenile is concluded within six months of his detention, and any delay beyond this period entitles the juvenile to be released on bail. Furthermore, since the denial of bail and detention of an accused pending trial curtail his fundamental rights to liberty, fair trial and dignity guaranteed by Articles 9, 10-A and 14 of the Constitution, statutory provisions on bail matters, such as Section 6(5) of the 2018 Act, must be interpreted in a manner that is progressive and expansive of these rights.</u>

12. Now, turning to the instant case, the approach of the High Court to deny the petitioner the benefit of Section 6(5) of the 2018 Act by observing that the offence is 'heinous' is not legally correct but rather misconceived. The nature of the offence is not a valid ground to withhold bail under Section 6(5) of the 2018 Act;

in fact, this provision only applies to heinous offences, as other offences are bailable under Section 6(3) of the 2018 Act." (Emphasis added)

11. Further in the case of ***Raheem Dad versus The State***[2], a learned single Judge of this court adjudicated a bail application pertaining to the then Juvenile Justice System Ordinance 2000 **("Ordinance")** and held as under:-

> *"I do not see any contradiction in the two provisions. Section 10 (7) of the Ordinance gives statutory right of bail This right is available to every child as defined in the Ordinance and is to be exercised in his favour irrespective of the nature of offence or the level of comprehension attained by the child provided, however, the conditions setup in section 10(7) of the Ordinance are met regarding a particular quantum of delay in the disposal of the case. It is for this reason that the provision is adorned with words "shall be". On the other hand section 497, Cr.P.C. in its first proviso uses the word "may" and empowers the Court to enlarge a person who is under the age of 16 years to be released on bail even if he is accused of an offence falling within the prohibitory clause of section 497(1), Cr.P.C. It is this way that the two provisions can be reconciled. It may be pointed out that child as defined in the Ordinance is a person who has not attained the age of 18 years whereas in the proviso to section 497(1) the threshold age is 16 years."* (Emphasis added)

12. A learned single judge of this Court in the case of ***Sabir versus the State***[3], interpreted Section 6 of the Act and allowed the bail application of a juvenile, accused of offences under Sections 376 (punishable by death), 380, 454 and 377 PPC and held as under:-

> *"6. A holistic reading of the above sections of the Act of 2018 reflects that a juvenile i.e. (a person less than 18 years of age) accused of a major or minor offence, should be granted bail as of right unless it appears that there are reasonable grounds for believing that the release of such juvenile may bring him in association with criminals or expose him to any other danger. If the offence for which a juvenile is charged is a heinous offence, the juvenile may be declined bail 3 if he is 16 years or older. In the present case, the applicant prima facie, according to the NADRA record appears to be 12 years of age and thus, would be entitled to the concession given in the Act of 2018 to persons falling within the ambit of that Act, 2018."*

13. It has already been expounded in the case of **Mehran** (supra) that the general scheme of the Act is more lenient towards juveniles in comparison to the

[2] 2012 YLR 590
[3] Cr. Bail Application No. 471 of 2022

provisions of the Ordinance. Further, the judgment mandates a "progressive" and "expansive" interpretation of the provisions of the Act. In light of the parameters defined in the above noted judgments, it is held that the Applicant qualifies for the concession of bail under Section 6(4) **and** (5) of the Act. The Applicant was admittedly fifteen (15) years of age at the time of the commission of offence and has been incarcerated for over six (6) months.

14. It is further held that the learned Additional Sessions Judge-IV/Special/ Gender Based Violence Court, Khairpur erred in its interpretation of Section 6(4) of the Act and denied the bail application of the present Applicant on the ground that the Applicant is accused of a "heinous offence". It is noted that the provision noted above is applicable only in cases where the juvenile is over sixteen (16) years of age. It has already been noted above that the present Applicant, at all relevant times, did not cross that threshold. Therefore, the nature of the offence in question was immaterial. Even if there was a doubt pertaining to the interpretation of the noted section, the benefit of the same ought to have been given to the Applicant. The said principle was enunciated by the Hon'ble Supreme Court whilst adjudicating a bail application under the Act in the case of ***Sahib Ulah Versus State through A.G. Khyber Pakhtunkhwa and another***[4] wherein it was held as under:-

> "*Another principle of criminal law which advances the contention of the petitioner's counsel is that if there are two possible interpretations of a provision of the law the one favourable to the accused is applicable, and all the more so when the accused is governed by a special law, which in the instant case is the Act.* "

15. Moreover, it is apparent that on merit the Applicant has also made out a case for bail as no statement under Section 164 Cr.P.C of the victim has been recorded and neither has any other cogent evidence surfaced before me to disentitle the Applicant for the concession of bail. I have also examined the text messages allegedly exchanged between Mst. Aisha and the Applicant. I cannot

[4] 2022 S C M R 1806

decipher from the messages whether the Applicant intended to commit the offence in question and the said adjudication can only be made at trial. Further, his incarceration will serve no useful purpose.

16. In view of the above circumstances, the Applicant has successfully made out a case for the grant of post-arrest bail. Accordingly, this bail application is allowed, and the Applicant is admitted to post-arrest bail, subject to furnishing solvent surety in the sum of Rs.50, 000/- (Rupees Fifty Thousand) and P.R bond in the like amount, to the satisfaction of the learned trial court.

17. Needless to mention that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the Applicant on merits.

JUDGE

Sulemen Khan/PA