

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Bail Application No. 2201 of 2021

Applicant : Adnan s/o Muhammad Nawaz, through
M/s. Habib-u-Rehman Marwat & Sahib
Khan Buner, advocates

Complainant : Israr Ahmed s/o Saeed Ahmed, through
Mr. Mukhtar Ahmed, advocate

Respondent : The State, through Ms. Rahat Ehsan,
Addl. Prosecutor General, Sindh

Date of hearing : 27.01.2022
Date of order : 27.01.2022

ORDER

ZAFAR AHMED RAJPUT, J.- Applicant/accused Adnan s/o Muhammad Nawaz on being unsuccessful in getting relief of post-arrest bail, vide order dated 17.11.2021, passed by the Model Criminal Trial Court/1st Additional Sessions Judge Malir, Karachi in Criminal Bail Application No. 2910 of 2021, through instant application seeks the same concession from this Court in Crime/FIR No. 528 of 2021, registered at Police Station Quaidabad under section 302, P.P.C.

2. It is alleged that, on 06.08.2021 at about 04:00 p.m., present applicant caused iron scissor blow to Asadullah, 16/17 years of age, the son of the complainant, on left side of his head who on 11.08.2021 succumbed to injury at ICU, Jinnah Hospital, Karachi, for which, the applicant was booked in the instant case for committing *qatl-i-amd* of the said deceased.

3. Learned counsel for the applicant has mainly contended that the applicant is innocent and has falsely been implicated in the case; that there is un-explained delay of four days in lodging of F.I.R.; hence deliberation and consultation for lodgings F.I.R. cannot be ruled out; that the applicant is

below the age of 13 years and under section 83, P.P.C., the alleged offence is no offence in law and the case of the applicant also falls under General Exception of section 96 read with section 100, P.P.C.; that the act of the applicant also falls under section 6 (ii & iii) of the Juvenile Justice System Act, 2018, entitling him for the concession of bail; that the applicant has taken specific plea of self-defence and, therefore, it is a fit case of further inquiry.

4. On the other hand, learned counsel for the complainant and learned Addl. P.G. have opposed the instant application on the ground that since the deceased was hospitalized, F.I.R. could not be lodged promptly by his father/complainant; that the provisions of sections 83, 96 and 100 of P.P.C. and section 6 (ii & iii) of the J.J.S Act, 2018 do not attract to the case of the applicant.

5. Heard. Record perused.

6. It appears that the learned Model Criminal Trial Court/1st Additional Sessions Judge Malir, Karachi has already made deliberation vide its order, dated 17.11.2021, on the point of application of sections 83, 96 and 100 of P.P.C. and section 6 (ii & iii) of the J.J.S Act, 2018 to the case of the applicant, as under:-

6). If we go through the wording of Section 83, P.P.C. it provides that, nothing is an offence if same is done by a child above the age of 10 and 14 subject to the fact that he had not attained sufficient maturity to understand the nature and consequences of his conduct on such occasions. In this regard now it has become crucial whether this benefit can be given to accused or not keeping in view of his age.

7). Interestingly accused had been produced thrice before learned Magistrate and twice accused was remanded to police custody but nowhere defence had taken the plea that the accused is even below the age of 13 years of age. The learned defence counsel had relied upon two documents to prove

age of accused. One is birth certificate issued by Union Council Zamanabad Korangi dated 13.08.2021 and school Leaving Certificate by Iqra Hadiqat-ul-Atfal situated at Landhi wherein such certificate is issued on 09.09.2021 and date of birth of accused is shown as 13.08.2008. Interestingly, the first document which is birth certificate of union council has been registered after incident and to previous birth document has been produced by the defence to show that it is the real age of accused and there is no explanation as to why this certificate was got issued by the father of accused with such unexplained delay, so this document seems to be doubtful. The reason of such finding is that I.O. had produced certain documents of the same school bearing their official stamp alongwith statement of one Fazal Raheem who is administrator of the same school wherein they have categorically stated that the same accused Adnan was got enrolled in their school by his uncle Gul Nawaz with date of birth i.e. 21.04.2005 and also produced certified copy of Enrollment Register of the school confirming the same date of birth and admission date of 22.01.2018 as well as one birth certificate earlier issued by the uncle of same accused on 30.06.2009 bearing date of birth as 21.04.2021 by U.C. Muslimabad Landhi Town Karachi. Now, it is quite surprising that the accused is studying in Landhi but the defence had produced the birth certificate issued by Union Council of Korangi. Thus under these circumstances one fact is crystal clear that the document produced by the defence are either manipulated or not correct, whereas the evidence collected by the I.O. who is duty bound under the Act of 2018 has sufficient evidence to prove that accused is more than 16 years of age. I am afraid the picture of accused available in police file does not show that accused is too young to be 12.5 years rather his photograph clearly show that he had developed mustaches and beard which are difficult to envisage for a 12.5 years old boy. Thus on the tentative assessment I am of this view that accused is more than 16 years of age by relying Section 8 of the Act, 2018 which clearly reveals that where any person claims to be juvenile then SHO or I.O. shall make enquiry and determine the age of such person on the basis of birth certificate, education certificate or any other pertinent document and in absence of such documents, age of accused may be determined on the basis of medical examination report. Thus when these documents are available and enquiry is made by I.O. then this Court had to rely on his opinion which is clear that accused is having date of birth i.e.21.04.2005 and he is above 16 years of age at the time of commission of offence.

8). Now, the matter regarding the bail of any juvenile is specifically dealt under section 6 of JJSA Act, 2018 wherein accused being juvenile had been given favour of bail in all cases which are minor and major as per the definition clause of the Act, 2018 (minor means punishable up to 03 years and major means punishable up to 07 years), however under section 6(4) of the Act, 2018 it is expressly provided that where a juvenile who is more than 16 years of age is involved in heinous offence (heinous as per definition clause is offence which is serious, brutal and punishable for death or life imprisonment or more than 07 years imprisonment) he may not be released on bail, if juvenile Court is of the view that there is reasonable ground for believing that he is involved in commission of such offence.

7. The above observations of the Court below appear to be well supported with the relevant documents on record, which do not suffer from any illegality or irregularity; hence, the same are not open to exception.

8. The applicant is nominated in the FIR by name with specific role of causing fatal injury to the deceased on his head. The ocular account is fully supported with medical evidence. Plausible explanation *prima facie* is available on record for the alleged delay in lodging F.I.R. Even otherwise, delay in lodging FIR is not *ipso facto* a ground for the grant of bail. The applicant has not denied the commission of alleged offence by him; on the contrary, he has taken plea in paragraph-5 of the instant application that infact the deceased had tried to sexually abuse him and to save his honour, he used his right of self-defence. Such plea is infact an issue that cannot be attended without going beyond the scope of tentative assessment, a venture prohibited by law.

9 From the tentative assessment of the evidence in hands of prosecution, I am of the view that *prima-facie* sufficient evidence is available against the applicant to connect him with the commission of alleged offence, carrying punishment for death or imprisonment for life. Every hypothetical question which could be imagined would not make it a case of further enquiry simply for

the reason that it could be answered by the trial Court subsequently after evaluation of evidence.

10. As a result of above discussion, the instant criminal bail application is dismissed. The above observations are tentative in nature for the disposal of the bail application and shall not influence the trial Court while deciding the case of the applicant on merits.

11. Above are the reasons of my short order, dated 27.01.2022, whereby instant application was dismissed.

JUDGE

Athar Zai