

IN THE HIGH COURT OF SINDH AT KARACHI

CR. BAIL APPLICATION NO.536/2021

Applicant : Rahman
through Mr. Muhammad Shehzad advocate.

Respondent : The state,
through Mr. Talib Ali Memon, APG.

Date of hearing : 06.05.2021.

Date of order : 06.05.2021.

ORDER

SALAHUDDIN PANHWAR, J. Brief facts of the case are that complainant ASI Ali Akbar of PS Gulshan-e-Maymar alongwith other police officials were busy in patrolling in police mobile when they received spy information that drug supplier is coming alongwith drug from Gaddap on motorcycle and going towards Afghan camp to sell the drugs, they reached at sector 24 Taiser Town near Afghan camp at Gulshan-e-Maymar and stood beside the road when at about 1205 hours saw a motorcycle coming from Gadap and on pointation of spy stopped and apprehended the accused person who disclosed his name as Rahman, a black shopper was kept between his legs on fuel tank of motorcycle, they checked that bag in which khaki envelope having 127 charas rods in white plastic which on weighting found to be 1650 grams, from personal search Rs.230 were recovered, accused failed to produce documents of motorcycle, he admitted that he alongwith companion Ashique snatched that motorcycle almost 15

days ago which was confirmed to be snatched and such FIR No.854/2020 u/s 397 PPC PS S.S.H.I.A was registered, accused was arrested in FIR No.854/2020 as well FIR No.525/2020 under section 6/9-C CNS was registered.

2. Heard learned counsel for respective parties and perused the record.

3. Learned counsel for the applicant/accused contended that date of birth of accused as mentioned in his CRO record attached to police file is 01.01.2004 hence he is below 18 years of age and being juvenile entitled to all benefits as mentioned in Juvenile Justice System Act, 2018; that age of applicant was determined by Judicial Magistrate, District Malir at Karachi and in this regard references can be made to order dated 04.02.2021 passed in other FIR No.854/2020 u/s 392/34 P.P.C. He has relied upon 2020 PCRLJ 627 and 2020 PCrLJ 1158.

4. In contra, learned DPG opposed the application contending that applicant has not produced any proof of his tender age; applicant is habitual criminal involved in four different crimes; the interrogation report and initial medical examination of accused show him to be of 20 years of age.

5. *Prima facie*, the applicant / accused seeks his release on bail *only* on ground of juvenility. Here, it is needful to add that earlier bail application filed by present applicant was disposed of with direction to the trial court to consider his bail application on the plea of juvenile. Learned trial court after that direction decided bail application of present applicant. Being relevant paragraph No.7, 8 and 9 are reproduced herewith:-

“7. I have given my anxious consideration to the arguments advanced on behalf of respective parties. It is

admitted position that accused in his earlier bail application did not claim his juvenility for seeking any lenient view of the Court in terms of JJSA, 2018 but after the dismissal of his first bail application and passing of favourable order by Judicial Magistrate at Malir in some other case he has filed instant application, which clearly demonstrates that he is motivated by some error of determining his age by the said Judicial Magistrate or any wrong entry of his age in his CRO record came in his notice, which normally being part of police file was not to be disclosed.

8. Be that as it may the accused has disputed his age in his second bail application- and claimed juvenility to avail its benefits. In this regard, section 8 of JJSA, 2018 provides comprehensive procedure of inquiry as to determination of the age, one of them, is the medical examination of accused by medical officer is also available particularly, when accused himself has failed to furnish any proof in shape of his birth certificate, educational certificate or any other document in support of his claim.

9. In view of the above, accused is referred to medical board for ossification test and determination of his age. Other grounds on merits of the bail have already heard and discarded through earlier order dated: 28.01.2021, which cannot be reviewed by this Court except **the accused to furnish any fresh ground for grant of bail.** Since the application in hands as per standing directions of the Hon'ble High Court is required to be decided within prescribed time limit, the same cannot be kept pending for indefinite period till determination of the age of accused, thus, application in hand stands disposed of accordingly. **However, accused is at liberty to repeat the same, in case, if he is determined Juvenile by medical board, at any later stage."**

6. The above referred order, *prima facie*, shows that since plea of juvenile is not supported by any material or record while the medical board, per above bold part of order, is yet to decide question of *juvenility* or *otherwise* of the accused, therefore, the applicant has no ground to approach this Court, particularly when the trial Court *itself* has given liberty to the applicant / accused to repeat bail plea if the report of medical board comes in *affirmation*. Instant application for bail without waiting for decision of the *medical board* is nothing but *pre-mature* one hence merits no consideration at all. Bail plea, being so, was declined by short order dated 06.05.2021. Needless to

clarify that such dismissal shall not prejudice the right of the applicant / accused in repeating bail plea before the trial Court on fresh ground, if emerges or if the medical board affirms his claim of being *juvenile*.

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