

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail Application No. 295 of 2021

Date	Order with signature of Judge
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For hearing of bail application:

22nd March, 2021

Mr. Nasrullah Korai, Advocate for applicant.

Mr. Talib Ali Memon, APG.

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Omar Sial, J: Muhammad Talha has sought post arrest bail in crime number 1 of 2021 registered under sections 392, 397 and 34 P.P.C. at the Kalri police station. Earlier his applications seeking bail were dismissed by the learned 2nd Additional Sessions Judge, Karachi South on 1-2-2021.

2. Brief facts of the case are that Inam-ul-Hasan lodged the aforementioned F.I.R. on 2-1-2021 reporting an incident that had occurred earlier that day. He narrated that while he and his cousin were on their way to work, they were intercepted by 2 boys on a motorcycle who robbed them of their valuables on the show of weapons. A commotion was raised which resulted in 1 of the boys panicking and driving away his motorcycle while leaving the other, identified as the applicant, on the scene who was then apprehended and arrested. An unlicensed weapon was also recovered from his possession.

3. I have heard the learned counsel for the applicant as well as the learned APG. My observations are as follows.

4. The learned counsel for the applicant has put on record a copy of the birth certificate of the applicant. The certificate reflects that the applicant was born on 25-7-2006. The offence was allegedly committed on 2-1-2021 which prima facie shows that the applicant was 14 and a ½ years. The certificate or the age of the applicant, as reflected by his birth certificate has not been disputed by the learned APG. Accordingly, it appears that the applicant falls within the definition of a "child" as given in section 2(b) of the Juvenile Justice System Act, 2018 and thus subject to the provisions of the Act of 2018.

5. Section 6(3) of the Act of 2018 provides that where a juvenile is arrested or detained for a commission of a minor or major offence for the purpose of the Act, he shall be treated as if he was accused of a commission of a bailable offence. A "major offence" has been defined in section 2(m) of the Act of 2018 as an offence the punishment of which is more than 3 years and up to 7 years of imprisonment. The offences with which the applicant is charged i.e. section 392 and 397 P.P.C. both stipulate a maximum penalty of more than 7 years. Offences which provide a punishment of death or imprisonment for life or imprisonment for more than 7 years and when the offence is of a serious, gruesome, brutal, sensational in character or shocking to public morality fall within the definition of "heinous" offence contained in section 2(g) of the Act of 2018. Section 6(4) of the Act of 2018 provides that a juvenile may not be released on bail when he is arrested or detained for a heinous offence if in the opinion there are reasonable grounds to believe that such a juvenile is involved in the commission of the offence alleged against him. This stipulation of the commission of a heinous offence being non-bailable is however applicable to a juvenile who is more than 16 but less than 18 years of age. There appears to be an ambiguity in the law as it is not clear as to what is the status of a juvenile who is above 14 years but less than 16 years of age and who is accused of a heinous offence. The intention of the legislature at the moment however appears to be that it only a 16 year old juvenile who has committed an offence which can be categorized as "serious, gruesome, brutal, sensational in character or shocking to public morality" who can be denied bail. In the present case, as mentioned above, the applicant appears to be of age 14 and ½ years therefore section 6(4) will not be applicable.

6. In view of the above, the applicant is admitted to post arrest bail subject to his furnishing a solvent surety in the sum of Rs. 100,000 and a P.R. Bond in the like amount subject to the satisfaction of the learned trial court. The trial court shall ensure that the provisions of the Act of 2018 are complied with. Although the birth certificate of the applicant reflects that the applicant is a juvenile yet as abundant caution the learned trial court should also ensure compliance with section 8 of the Act of 2018.

7. The bail application stands disposed of in the above terms.

JUDGE

