

Present: Manzoor Ahmad Malik and Syed Mansoor Ali Shah, JJ

SALEEM KHAN---Petitioner

Versus

The STATE and others---Respondents

Criminal Petition No.251-L of 2020, decided on 20th May, 2020.

Against the order of the Lahore High Court, Lahore dated 24.2.2020 passed in Crl. Misc. No.8158-B of 2020).

(a) Juvenile Justice System Act (XXII of 2018) ---

---Ss. 4(7) & 8---Determination of age by police or court---Scope---Police were to determine the juvenility of the accused and thereafter the case was put up before the Juvenile Court for trial---Determination of age of an accused who appeared or claimed to be a juvenile was, therefore, initially the statutory responsibility of the police---In the absence of any inquiry by the police the determination of age and juvenility of the accused could be determined by the court having taken cognizance of the matter.

(b) Juvenile Justice System Act (XXII of 2018) ---

---Ss. 6(5) & 8---Penal Code (XLV of 1860), Ss. 302 & 394---Qatl-i-amd, voluntarily causing hurt in committing robbery---Release of juvenile on bail---Statutory delay in conclusion of trial---Whether any time spent by court in determining age of accused could be treated as delay caused by accused---Held, that in the present case, the police had not carried out any exercise of determining age of accused and therefore the court on the application of the juvenile-accused issued the required declaration of juvenility---Determination of age by the court was also a statutory obligation, hence the time spent in obtaining the said finding or declaration by the court could not possibly be termed as delay caused in the trial by the accused, so as to deprive him of his right to bail on the ground of statutory delay---Any such determination of age by the court was a statutory requirement and formed part of the trial---Accused being a juvenile offender was entitled to bail on statutory ground, which was granted to him accordingly. [p.361] D & E

Mian Abdul Quddous, Advocate Supreme Court for Petitioner.

Mian Liaqat Ali Malik, Advocate Supreme Court for Respondent No.2.

M. Amjad Rafiq, Addl. PG along with Gulzar Ahmad, SI. for the State.

Date of hearing: 20th May, 2020.

ORDER

SYED MANSOOR ALI SHAH, J.--Leave has been sought against order of the Lahore High Court whereby second bail application of the petitioner (a juvenile offender) moved on statutory ground was dismissed. Briefly, according to the crime report on the night of 21.05.2018, the complainant and his brother left their house on their motorcycle to attend to some domestic errands. On the way, two unknown persons on a motorcycle, came up from behind and over-powered them and demanded to handover their mobiles and cash to them. As the brother of the complainant resisted, one of the two unknown persons shot him in his left leg and thereafter both fled away. In this background FIR No. 241 of 2018 was registered on 22.05.2018 at Thana Lower Mall, Lahore against the petitioner and his co-accused, initially under section 394, P.P.C. and later on as the brother of the complainant succumbed to his injuries and died, offence under section 302, P.P.C. was added to the crime report.

2. The first bail application of the petitioner was dismissed on merit by both the courts below on 29.08.2018 and 26.12.2018, respectively. Thereafter, charge was framed against the petitioner on 8.04.2019 and the petitioner on 22.04.2019 moved an application seeking declaration of his juvenility at the time of the crime, having been born on 01.01.2001 according to Form "B" maintained by NADRA. He also moved an application on 24.4.2019 for an ossification test. After examining the birth

certificate issued by NADRA, the medical report and the ossification test, the trial court declared the petitioner to be a juvenile on 27.11.2019. Thereafter, on 11.02.2020 the petitioner moved the second bail application on the basis of statutory ground as he was arrested on 7.06.2018. The bail applications were dismissed by both the courts below, hence the instant petition for leave to appeal.

3. The learned prosecutor and the counsel for the complainant, opposed the bail on two main grounds: they relied on the proviso to section 10(7) of the Juvenile Justice System Ordinance, 2000 ("Juvenile Ordinance") to submit that if the juvenile is over 15 years of age, bail can be refused to him if he is involved in a heinous crime or has a previous criminal record; and that the delay in the trial caused in determining the age of juvenility on the application of the petitioner is a delay attributable to the petitioner and not to the prosecution. Learned counsel for the petitioner, however, argued otherwise to submit that the petitioner is entitled to bail on statutory ground under the law.

4. After hearing the parties, we felt it important to reproduce sections 7 and 10 (7) of the Juvenile Ordinance and sections 4(7), 6 (5) and 8 of the Juvenile Justice System Act, 2018 ("Juvenile Act") which repealed the Juvenile Ordinance. It is important to highlight that the Juvenile Act came into force on 18.05.2018¹ while the occurrence, as reported in the crime report took place on 21.5.2018. Juvenile Act was, therefore, fully applicable to the case in hand.

Sections 7 and 10 (7) of the Juvenile Ordinance:

7. Determination of age. If a question arises as to whether a person before it is a child for the purposes of this Ordinance, the juvenile Court shall record a finding after such inquiry which shall include a medical report for determination of the age of the child.

10. Arrest and bail.-

(7) Notwithstanding anything contained in the Code and except where a juvenile court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused 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, a child who, for commission of an offence, has been detained, shall be released on bail,-

- (a) if, being accused of an offence punishable with death has been detained for such an offence for a continuous period exceeding one year and whose trial for such an offence has not concluded;
- (b) if, being accused of any offence punishable for imprisonment for life has been detained for such an offence for a continuous period exceeding six months and whose trial for such offence has not concluded; or
- (c) who, being accused of any offence not punishable with death, or imprisonment for life, has been detained for such an offence for a continuous period exceeding four months and whose trial for such an offence has not concluded:

Provided that where a child of the age of fifteen years or above is arrested, the Court may refuse to grant bail if there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life.

Sections 4(7), 6 (5) and 8 of the Juvenile Act:

4. Juvenile Court.-

.....

(7) If any court taking cognizance of an offence finds that an accused brought before it is a juvenile, it shall transfer his case to the Juvenile Court for further proceedings.

6. Release of a juvenile on bail.-

(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 continuous period exceeding six months and whose trial has not been completed.

8. Determination of age. (i) Where a person alleged to have committed an offence physically appears or claims to be a juvenile for the purpose of this Act, the officer-in-charge of the police station or the investigation officer shall make an inquiry to determine the age of such person on the basis of his birth certificate, educational certificates or any other pertinent documents. In absence of such documents, age of such accused person may be determined on the basis of a medical examination report by a medical officer.
- (2) When an accused person who physically appears to be a juvenile for the purpose of this Act is brought before a Court under section 167 of the Code, the Court before granting further detention shall record its findings regarding age on the basis of available record including the report submitted by the police or medical examination report by a medical officer.

Determination of age

5. The determination of the age or juvenility of the accused under the Juvenile Ordinance was the responsibility of the trial court, requiring the trial court to hold an inquiry including obtaining a medical report for the determination of age. However, this process underwent change under section 8 of the Juvenile Act, wherein if the accused physically appears or claims to be a juvenile, the Police shall make an inquiry to determine the age of the accused on the basis of his birth certificate, educational certificate or any other pertinent document. In the absence of such documents, age of such accused person may be determined on the basis of a medical examination report by a medical officer. Therefore, the Police are to determine the juvenility of the accused and thereafter the case is put up before the Juvenile Court for trial. Section 8(2) provides that if the accused physically appears to be a juvenile when brought before a court (of general criminal jurisdiction) under section 167 Cr.P.C the court shall before granting further detention record its finding regarding age of the accused. Section 4(7) of the Juvenile Act provides that a criminal court of general jurisdiction can find the accused to be a juvenile and thereafter transfer the case to the juvenile court for further proceedings. Therefore, in the absence of any inquiry by the Police the determination of age and juvenility of the accused can be determined by the court having taken cognizance of the matter. This is what happened in the instant case, when the court declared the petitioner to be a juvenile on the application of the petitioner.

6. Determination of age of an accused who appears or claims to be a juvenile is, therefore, initially the statutory responsibility of the Police. In the absence of which, the court of general jurisdiction enjoys the power to determine the age of the accused, and if declared to be a juvenile, transfer the case to the concerned Juvenile Court. In the instant case, the Police had not carried out any such exercise and therefore the court on the application of the petitioner issued the required declaration. The determination of age by the court is also a statutory obligation, hence the time spent in obtaining the said finding or declaration by the court cannot possibly be termed as delay caused in the trial by the accused, so as to deprive him of his right to bail on the ground of statutory delay. Any such determination of age by the court is a statutory requirement and forms part of the trial.

Trial and the period of statutory delay

7. The period of statutory delay of one year for offences punishable for death under the Juvenile Ordinance has been reduced to six months under the Juvenile Act and the proviso under section 10(7) of the erstwhile Ordinance stating that bail may be refused to a juvenile offender if he is 15 years of age or above and there are reasonable grounds to believe that the juvenile is involved in a heinous offence or is a previous convict for an offence punishable under death or imprisonment for life, has been repealed under the new Juvenile Act. Section 6(5) of the Juvenile Act provides that the juvenile will be entitled to be released on bail if he has been detained for a continuous period exceeding six months while his trial has not been concluded, unless the delay has been occasioned by the act or

omission of such a juvenile. The petitioner was arrested on 7.06.2018 and the petitioner was declared a juvenile on 27.11.2019 the trial has still not been concluded. The second bail application on statutory ground was moved on 11.12.2019 which is much after the period of six months from the date of arrest as provided under section 6(5) of the Juvenile Act. For the above reasons the petitioner being a juvenile offender was entitled to bail on statutory ground.

9(sic). These are the reasons for our short order dated 20.05.2020 reproduced hereunder for convenience and completion of record. The instant petition is, therefore, converted into an appeal and allowed.

"For reasons to be recorded later, the instant criminal petition is converted into an appeal and the same is hereby allowed. Appellant Saleem Khan is allowed bail (in the instant FIR) subject to his furnishing bail bond in the sum of Rs.200,000/- (Rupees two hundred thousand) with one surety in the like amount, to the satisfaction of the trial court."

MWA/S-23/S Petition allowed.