

Present: Syed Mansoor Ali Shah, Muhammad Ali Mazhar and Athar Minallah, JJ

MEHRAN---Petitioner

Versus

UBAID ULLAH and others---Respondents

Crl.P.L.A. No. 80-P of 2024, decided on 29th May, 2024.

(Against the judgment of the Peshawar High Court, Peshawar, dated 25.03.2024, passed in Cr. M.B.A. No.551-P of 2024).

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

---Preamble---Constitution of Pakistan, Art. 35---United Nations Convention on the Rights of the Child (UNCRC), Art. 3---Juvenile justice system---Child justice---Therapeutic jurisprudence---Purpose and objective of the juvenile justice system explained.

The juvenile justice system specifically addresses the situation of children alleged to have infringed criminal law and operates under the premise that juveniles are different from adults and require special attention and treatment. Since juveniles are more amenable to rehabilitation than adults, the juvenile justice system is designed not just to punish but to rehabilitate, emphasizing correction and guidance to help children develop into responsible adults. A range of factors underscore the need for a special justice system for juveniles. These include juveniles' lack of maturity, propensity to take risks, susceptibility to peer influence, as well as intellectual disabilities, mental illness, and victimization. This system is distinct from the ordinary criminal justice system and is based on a rehabilitative and restorative model rather than a retributive one. It emphasizes reducing crime by rehabilitating and reclaiming juvenile offenders, focusing on treating rather than punishing them. Central to this system is the principle of the 'best interest of the child', which ensures the fulfillment of a juvenile's basic rights, needs, identity, social well-being, and physical, emotional and psychological development. The rationale behind this non-punitive approach is that public safety is best served by emphasizing rehabilitation rather than the incapacitation and punishment of juveniles.

Kathleen Daly, 'Restorative v. Retributive Justice' (2002) 4(1) Punishment and Society Sage Publications 55; Anees Jillani, Cries Unheard: Juvenile Justice in Pakistan, Society for the Protection of the Rights of the Child (1999) and Cox, S.M., Conrad, J. J., and Allen, J. M., Juvenile Justice: A guide to theory and practice, McGraw-Hill Humanities, Social Sciences and World Languages (2003) ref.

The main objective of the Juvenile Justice System Act, 2018 ('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 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 United Nations Convention on the Rights of

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

David B. Wexler, *Reflections on the Scope of Therapeutic Jurisprudence*, 1(1) *Psychology, Public Policy, and Law*, 220-236 and Patrick H. Tolan and Jennifer A. Titus, 'Therapeutic jurisprudence in juvenile justice' in G.S. Goodman, *Children as victims, witnesses, and offenders: Psychological science and the law*, New York: Guilford Press, p. 313-333 ref.

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

---Ss. 2(g), 2(m), 2(o), 6(4) & 6(5)---Juvenile accused---Heinous offence---Bail---Statutory delay in conclusion of trial---Principles---Since both 'minor offence' and 'major offence' are treated as bailable under Section 6(3) of the Juvenile Justice System Act, 2018 ('the 2018 Act'), 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---Nature of the offence is not a valid ground to withhold bail under Section 6(5) of the 2018 Act.

Khawar Kayani v. State PLD 2022 SC 551 ref.

(c) Criminal Procedure Code (V of 1898)---

---S. 497---Juvenile Justice System Act (XXII of 2018), Ss. 6(5) & 8---Penal Code (XLV of 1860), Ss. 302, 324, 392, 427, 201 & 34---Khyber Pakhtunkhwa Arms Act (XXIII of 2013), S. 15---Constitution of Pakistan, Art. 185(3)---Qatl-i-amd committed during robbery---Bail, grant of---Juvenile accused---Statutory delay in conclusion of trial---Main reasons given by the High Court for the denial of bail to the petitioner (juvenile accused) on the statutory ground of delay in the conclusion of the trial were (i) that the petitioner committed a 'heinous offence'; (ii) that the delay in the conclusion of the trial was attributable to the petitioner, as he had moved an application for the determination of his age under Section 8 of the Juvenile Justice System Act, 2018 ("2018 Act"), which took time; and (iii) the frequent absence of the co-accused during the trial also contributed to the delay---Validity---High Court erred in law by attributing the delay in concluding the trial to the petitioner, who had filed an application for determination of his age under Section 8 of the 2018 Act, which took time---Initial duty to determine the age of an accused who appeared or claimed to be a juvenile laid with the police---When the police fails in this duty, it passes on to the court---Therefore, the time spent by the court in making this determination constitutes an act of the court, which cannot be construed as delay caused by the petitioner in the trial, thereby depriving him of his right to bail on the statutory ground of delay---So far as the delay caused by the frequent absence of the co-accused during trial was concerned, the same could not be attributed to the petitioner as one was responsible for his own acts or omissions, not of others---Petitioner was arrested in the present case on 23 February 2023 and had been detained continuously for more than six months since then, with his trial not yet concluded---There was no evidence on record indicating that the delay in concluding the trial was caused by any act or omission of the petitioner---Therefore, the prerequisites of Section 6(5) of the 2018 Act were fulfilled, which entitled the petitioner to the grant of post-arrest bail as a matter of right on the statutory ground of delay in the conclusion of the trial---Petition was converted into an appeal and the same was allowed, the impugned judgment was set aside, and the petitioner was admitted to bail.

Saleem Khan v. State PLD 2020 SC 356; Himesh Khan v. NAB 2015 SCMR 1092 and Khursheed Shah v. State PLD 2022 SC 261 ref.

(d) Criminal Procedure Code (V of 1898)---

---S. 497---Juvenile Justice System Act (XXII of 2018), S. 6(5)---Constitution of Pakistan, Art. 185(3)---Bail---Juvenile accused---Statutory delay in conclusion of trial---Period of delay in concluding the trial is calculated from the date of the arrest of the accused.

Saleem Khan v. State PLD 2020 SC 356 ref.

Shabbir Hussain Gigyani, Advocate Supreme Court (Through V.L. Peshawar Registry) for Petitioner.

Noroz Khan, Addl. A.G. KPK along with Complainant in person, Fazal Akbar, DSP and Safdar Iqbal, S.I./I.O for Respondents.

Assisted by: Umer A. Ranjha, Judicial Law Clerk.

Date of hearing: 29th May, 2024.

ORDER

SYED MANSOOR ALI SHAH, J.---The petitioner, a juvenile, seeks leave to appeal against the judgment of the Peshawar High Court, Peshawar, dated 25 March 2024 ("impugned judgment"). By the impugned judgment, the High Court dismissed the petitioner's post-arrest bail petition, which was filed on the statutory ground of delay in the conclusion of his trial, in case FIR No. 417/2021, dated 16 August 2021, registered at Police Station Prang, District Charsadda, for offences punishable under Sections 302, 324, 392, 427, 201 and 34 of the Pakistan Penal Code, 1860 ("P.P.C."), and Section 15 of the Khyber Pakhtunkhwa Arms Act, 2013.

2. Briefly, according to the crime report (FIR), the allegations against the petitioner are that during the night hours of 16 August 2021, Ubaid Ullah ("complainant") and Shafiq Ur Rehman ("deceased") were travelling on the motorway when the petitioner, along with the other co-accused, signaled them to stop. The deceased, who was driving the car, did not stop. As a result, the petitioner and the other co-accused fired upon them, causing the deceased to sustain injuries to which he subsequently succumbed, while the complainant remained unhurt.

3. In this case, the petitioner was arrested on 23 February 2023. He filed a bail petition, which was dismissed on merits by both the trial court and the High Court. Thereafter, on 18 September 2023, the petitioner moved an application seeking a determination of his juvenility. Relying on the secondary school certificate of the petitioner and the report of the medical board, the trial court declared the petitioner a juvenile, aged 14 years and 5 months, at the time of the commission of the offence. Therefore, the petitioner was under the age of 16 years at the time of his arrest and detention. The petitioner then moved a second bail petition on the statutory ground of delay in the conclusion of the trial, which was dismissed by both the trial court and the High Court, vide judgments dated 22 January 2024 and 25 March 2024, respectively.

4. The two reasons given by the High Court for the denial of bail to the petitioner on the statutory ground of delay in the conclusion of the trial were (i) that the petitioner committed a 'heinous offence', and (ii) that the delay in the conclusion of the trial was attributable to the petitioner, as he had moved an application for the determination of his age under Section 8 of the Juvenile Justice System Act, 2018 ("2018 Act"), which took time. Additionally, the High Court observed that the frequent absence of the co-accused during the trial also contributed to the delay.

5. We have heard the learned counsel for the parties and have perused the record of the case with their able assistance.

6. We may observe at the outset that the juvenile justice system specifically addresses the situation of children alleged to have infringed criminal law and operates under the premise that juveniles are different from adults and require special attention and treatment. Since juveniles are more amenable to rehabilitation than adults, the juvenile justice system is designed not just to punish but to rehabilitate, emphasizing correction and guidance to help children develop into responsible adults. A range of factors underscore the need for a special justice system for juveniles. These include juveniles' lack of maturity, propensity to take risks, susceptibility to peer influence, as well as intellectual disabilities, mental illness, and victimization. This system is distinct from the ordinary criminal justice system and is based on a rehabilitative and restorative model rather than a retributive one.¹ It emphasizes reducing crime by rehabilitating and reclaiming juvenile offenders, focusing on treating rather than punishing them.² Central to this system is the principle of the 'best interest of the child',³ which ensures the fulfillment of a juvenile's basic rights, needs, identity, social well-being, and physical, emotional and psychological development. The rationale behind this non-punitive approach is that public safety is best served by emphasizing rehabilitation rather than the incapacitation and punishment of juveniles.⁴

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.⁵

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.⁶ 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.'⁸ 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.⁹ 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 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:

6. Release of a juvenile on bail.-

(1)...

(2)...

(3)...

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

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. 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.

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'¹⁰ and 'major offence'¹¹ are treated as bailable under Section 6(3),¹² 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'.¹³ 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.¹⁴

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. 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.

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.

13. The High Court has also erred in law by attributing the delay in concluding the trial to the petitioner, who had filed an application for determination of his age under Section 8 of the 2018 Act, which took time. It is crucial to emphasize that the initial duty to determine the age of an accused who appears or claims to be a juvenile lies with the police. When the police fail in this duty, it passes on to the court.¹⁵ Therefore, the time spent by the court in making this determination constitutes an act of the court, which cannot be construed as delay caused by the petitioner in the trial, thereby depriving him of his right to bail on the statutory ground of delay.¹⁶ So far as the delay caused by the frequent absence of the co-accused during trial is concerned, the same cannot be attributed to the petitioner as one is responsible for his own acts or omissions, not of others.¹⁷

14. The petitioner was arrested in this case on 23 February 2023 and has been detained continuously for more than six months since then, with his trial not yet concluded. It is crucial to note that the period of delay in concluding the trial is calculated from the date of the arrest.¹⁸ There is no evidence on record indicating that the delay in concluding the trial was caused by any act or omission of the petitioner. Therefore, the prerequisites of Section 6(5) of the 2018 Act are fulfilled, which entitles the petitioner to the grant of post-arrest bail as a matter of right on the statutory ground of delay in the conclusion of the trial.

15. For the above reasons, the courts below are found to have made a legal error in declining bail to the petitioner under Section 6(5) of the 2018 Act, warranting interference by this Court in the interest of justice. The present petition is, therefore, converted into an appeal and the same is allowed. The impugned judgment is set aside, and the petitioner is admitted to bail, subject to furnishing bail bond in the sum of Rs. 50,000/- with two sureties in the like amount to the satisfaction of the trial court.

MWA/M-29/SC

Bail granted.