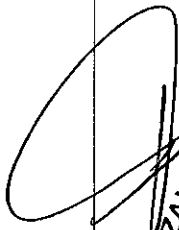


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**IN THE COURT OF ADDITIONAL SESSIONS JUDGE/JUDGE SPECIAL COURT
ORAKZAI, AT BABAR MELA**

BA No. 80/4 of 2022
Gul Ahmad ___ vs ___ State

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order	24/09/2022	<p>Mr. Danyal Khan Chamkani Advocate for petitioner and Mr. Umar Niaz Khan District Public Prosecutor for State are in attendance. Arguments have already been heard; whereas, this is the disposal of petition for grant of post arrest bail.</p> <p>2. Petitioner was earlier refused grant of bail by this Court vide Order dated 25-08-2022 passed in BA No. 80/4 of 2022, which was assailed before the Hon'ble Peshawar High Court, Peshawar in Cr. Misc. (BA) No. 2758-P/2022 and disposed of vide Judgement dated 07-09-2022. The operating part of which is re-produced herein below for ease of reference. <i>"It was argued by the learned counsel for the petitioner that he has specifically taken ground of juvenility in para D of the petition and clamed bail in terms of Section 6(3) of the Juvenile Justice System Act, 2018. However, no finding in this regard was recorded by the learned lower Court while refusing bail to him. In support of his contention, he read out the impugned order of the learned Additional Sessions Judge/JSC, Orakzai at Baber Mela. After going through the judgement of the learned lower Fora I find that the learned Court below failed to record its observation with regard to the plea of juvenility urged by the petitioner. Hence, the impugned order of the learned Additional Sessions Judge/JSC dated 25-08-2022 is set aside and the case is sent back to him for decision afresh as observed hereinabove strictly in accordance with the provision contained in section 6 of the Juvenile Justice System Act, 2018. Needless to mention that the application filed by the petitioner shall be deemed to be pending before the learned trial court. The learned counsel for the</i></p>


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petitioner is directed to appear before the court concerned on 15-09-2022."

3. On presentation of the certified copy of the Judgement under reference, the bail application earlier disposed of was treated as pending and was registered on its old Neem number. Record was requisitioned and learned counsel for petitioner as well as learned DPP for State were heard at length.

4. In compliance with the Judgement, the contents of this bail application are being examined in the touch stone of Section-6 of the Juvenile Justice System Act, 2018. The referred Law is reproduced herein below as ready reference.

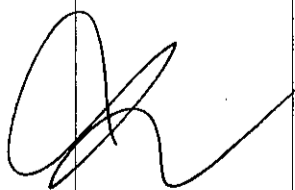
"Section 6. Release of Juvenile on bail:

(1). Notwithstanding anything contained in the Code, a juvenile accused of bailable offence shall, if already not released under section 496 of the Code, be released by the Juvenile Court on bail with or without surety unless it appears that there are reasonable grounds for believing that the release of such juvenile may bring him in association with criminals or expose him to any other danger. In this situation, the juvenile shall be placed under the custody of a suitable person of Juvenile Rehabilitation Center under the supervision of probation officer. The juvenile shall not under any circumstances be kept in a police station under police custody or jail in such cases.

(2). The Juvenile Court shall, in a case where a juvenile is not released under subsection (1), direct the police for tracing guardian of such juvenile and where guardian of such juvenile is traced out, the Juvenile Court may immediately handover custody of the juvenile to his guardian.

(3). Where a juvenile is arrested or detained for commission of a minor or a major offence for the purposes of this Act, he shall be treated as if he was accused of commission of a bailable offence.

(4). Where a juvenile of more than 16 years of age is


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(5)

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 of 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.”

5. Learned counsel representing petitioner termed that age of the accused mentioned in card of arrest as 18 years is wrong and relied on the Form-B issued by NADRA Authorities which reflects the age of accused/petitioner is 15 years 04 months and 24 days. He argued that the accused is below the age of 16 years and thus entitled for grant of bail as a matter of right. District Public Prosecutor has opposed the arguments by stating that the age recorded in card of arrest is genuine and reasonable being beard and physically major and if the Court is disagreeing with it, can refer the matter to prescribed procedure of inquiry for the purpose of age determination.

6. To comprehension of this Court, Section-6(3) of Juvenile System Act, 2018 has provided scheme of bail only in the case of minor or major offences and is silent about grant of bail in heinous offence. Heinous offence has separately been defined in definition clause-2(g) of the JJSA, 2018 and it's not mentioning in Section-6(3) would definitely mean that this concession of treatment minor and major offences as bailable is not applicable to heinous offences. When it is established that Section-6(3) of JJSA, 2018 is not applicable to the heinous offences, the Court has to recourse to general law postulated in Chapter-XXXIX of the Code of Criminal Procedure, 1898. This discussion can safely be concluded that the concession of

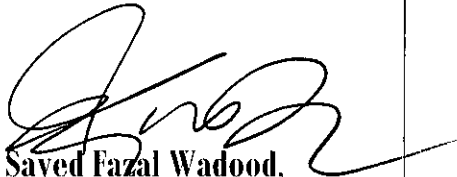

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section-6(3) of JJSA, 2018 is not applicable to the case petitioner being involved in case of heinous nature. It has been observed in Judgement reported as PLD-2014 Lah Lahore 503 that in present time, a male/female child gains sense of understanding things early and speedily as compare to older times on account of modernization, devices and technologies in all walks of life. When a child of 15 or above is arrested the Court may refuse to grant bail if there are reasonable grounds to believe that such child is involved in heinous offence. Similarly, it has further been observed in Judgement reported as 2018 PCr.LJ 498 that accused under age of 15 years may be refused grant of bail when he is involved in case of heinous nature; whereas, present petitioner is above 15 years of age.

7. Besides, accused is directly charged in a promptly lodged FIR followed by his spot arrest. He was single available person in the vehicle wherefrom its secret cavities, huge quantity of 15400 grams chars has been recovered; against which, criminal law was rightly brought into motion on registration of FIR No. 74 dated 30-07-2022 under Section-9 D of the KP CNSA, 2019 in Police Station, Kalaya Orakzai.

8. For what has been discussed above, instant bail petition stands dismissed. File of this Court be consigned to District Record Room after its necessary completion and compilation within the span allowed for; whereas, copy of this Order be placed on record of Police to be returned accordingly.

9. Announced in open Court.


Sayed Fazal Wadood,
ASJ/JSC, Orakzai at Baber Mela