# ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

**Criminal Misc. No. 28/B/2025**

Niaz Muhammad

***Versus***

The State, etc.

| S. No. of order/ proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|---|---|---|
| | 24.01.2025. | Mr. Wiqar Ahmed, Advocate for petitioner.<br>Ms. Maimana Khattak, State Counsel.<br>Sajid Cheema, DSP (Legal) ICT Police.<br>Arif, S.I. |

Through this Crl. Misc., petitioner has prayed for his post-arrest bail in case FIR No.151, dated 24.02.2024, U/S 9(1)6(d), 9(2)5 CNSA 1997, P.S. Tarnol, Islamabad.

2. Brief facts referred in the instant FIR lodged on the complaint of Shahid Asghar, S.I. are that he apprehended the petitioner while in possession of 1228 & 1208 grams heroin, total weighing 2516 grams heroin as well as one packet ice weighing 590 grams on 24.02.2024 in the territorial jurisdiction of PS Tarnol, Islamabad. Hence this FIR.

3. Learned counsel for the petitioner contends that petitioner is innocent and has falsely been implicated in this case; that petitioner is minor and his date of birth is 13.03.2009 and he was 14 years and 09 months old at the time of his arrest and as such he has completed his statutory period provided in this case; that challan has

been submitted in the court but despite lapse of approximately 11 months trial has not yet started, therefore, petitioner be granted post-arrest bail.

4. Conversely learned State Counsel contends that petitioner is involved in heinous crime of drug supply and got recovered huge quantity of narcotics which entails capital sentence, therefore, bail could not be granted to the petitioner; that trial will be concluded in the short span of time and granting bail would extend a license to the petitioner to involve further in criminal activity.

5. Arguments heard, record perused.

6. Tentative assessment of record reflects that petitioner has been apprehended while in possession of 2516 grams heroin and 590 gram ice by the police. Petitioner claims that he is a juvenile and has earned certain rights as he was born on 13.03.2009 and he was 14 years and 09 months old at the time of occurrence but such aspect was not considered by the lower court, however, this court vide order dated 17.01.2025 directed the I.O to get verify the birth entry of petitioner from NADRA record. Consequently, a report has been submitted after verifying the record from NADRA and petitioner's date of birth has been verified as 13.03.2009, therefore, at the time of his arrest he was less than 18 years of age. Therefore, in this backdrop, this court has been guided with the principles set out in Juvenile

Justice System Act (**JJSA**), 2018, which deals with the arrest of juvenile in a special manner where arrested juvenile shall be kept in an observation home and the officer-in-charge of the police station shall, as soon as possible inform guardian of the juvenile, if he can be found, of such arrest and inform him of the time, date and name of the Juvenile Court before which the juvenile shall be produced and inform the concerned probation officer to enable him to obtain such information about the juvenile and other material circumstances which may be of assistance to the Juvenile Court for making inquiry but surprisingly entire police report and investigation file is silent to that aspect. It reflects the poor working of the police department and even the Magistrate has not observed the requirement of Section 5 of the JJSA, 2018 while dealing with the minor/juvenile in this criminal case.

7. While attending this proposition with reference to the age of the present petitioner his right to be released on bail is to be regulated in terms of Section 6 of the JJSA, 2018, which start with the language "*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.*" Hence, language used by

the legislature out rightly gives an exceptional scenario to every juvenile accused who is less than 16 years of age by declaring it bailable offence though sub-section (4) of Section 6 of the Act deals with the juvenile accused who is more than 16 years of age can only be detained if he is involved in heinous offence.

8. No doubt as per definition provided in Section 2(g) of the JJSA, 2018, it has been claimed by respondent side that offence falls within the definition of heinous offence if seen in context of the sentence provided against Section 9(1)6(d) and Section 9(2)5 CNSA, 1997 but the required yardstick to verify the fact that any offence is heinous offence has some other primary features including *"serious, gruesome, brutal, shocking to public morality or punishable under any law with death or imprisonment for life"* but these elements are missing in this case except the sentence provided for the offence in this case is more than seven years. In this backdrop, law has to be interpreted in favour of juvenile while giving preference to a young boy, who has been involved in drug trafficking.

9. It is the duty of the court to observe JJSA, 2018 while considering the concept of diversion which is alternative process of determining the responsibility and treatment of a juvenile on the basis of his social, moral and educational background without resorting to formal judicial proceedings even at bail stage, which is missing

in this case, whereas it is mandatory in terms of International Standards set out in Child Right Convention, 1989 under Article 37 that the child/juvenile shall be arrested in conformity with the law of the State and such arrest shall be used as measure of last resort. Thus, the arrest and post-arrest treatment of a juvenile is regulated as per JJSA, 2018.

10. I have also gone through the order passed by the Judge Special Court (CNS), Islamabad-West, who has not put any serious effort to direct the I.O for verification of NADRA record, birth certificate or any such record which has been placed by the family members of the accused including the Form-B to assess the correct age at that stage and if such an order was passed six months ago, petitioner/accused might be released and a child could be saved from further incarceration, therefore, in this backdrop, this court is convinced that petitioner is juvenile, who was less than 16 years of age at the time of his arrest and he earned his right of bail under JJSA, 2018, in which those offences have been considered as bailable in terms of Section 496 Cr.P.C. read with sub-section (3) of Section 6 of the Act. All these aspects if considered in terms of international commitment given by the State under Child Right Convention, 1989 the Juvenile Justice Committee has to intervene in such type of cases while submitting a diversion plan, which could be exercised at any time

during the investigation by the police and during trial by the prosecution and court in the prescribed manner but sorrow state of affairs have emerged on record in which no effort has been put forward which are key requirements in terms of Sections 9 & 10 of the JJSA, 2018 read with Section 14 where probation officer has been directed to assist and prepare a report on the direction of court while considering the juvenile character, educational, social and moral background and all legal and appropriate assistance provided at all levels to juvenile for his understanding, concept and consequences, even to the child's family and guardian and shall provide the mechanism of sending juvenile to Juvenile Rehabilitation Centre or release on probation under clause (f) of sub-section (1) of Section 14 of the Act. There is no bar on the Juvenile Court to exercise the powers contained in Section 15 of the Act, even during the course of inquiry, investigation or trial to release the juvenile offender or pass any order for the community service, or to release the juvenile offender on probation for good conduct and place such juvenile offender under care of a guardian or any suitable person of such Juvenile Rehabilitation Centre established or certified for the purposes of this Act for any period not exceeding the period of confinement awarded to such juvenile.

11. In view of above background, petitioner has earned his right to grant bail. Hence, instant Crl. Misc. is

***allowed***. Petitioner is admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs.20,000/- (Rupees Twenty Thousand only) with one surety in the like amount to the satisfaction of learned trial Court. Petitioner is at liberty to submit surety in cash and if it appears to the trial court that family members of the petitioner/accused are unable to submit surety or cash, then petitioner be released on submission of personal surety bond of any family member of the accused.

12. The JJSA, 2018 emphasize rehabilitation and reintegration of juveniles into society over punitive measures. Therefore, before parting with this order, it is necessary to pass directions to Inspector General of Police, SSP (Investigation), learned MIT and learned District & Sessions Judges of Islamabad to observe the following yardsticks in terms of Child Right Convention and International Commitment given by the State of Pakistan in the global perspective to protect the juvenile rights in all manners:-

i. Any child/juvenile when arrested in any criminal case, it is the obligation of I.O to call the family members (mother, father or any other guardian, as the case may be), who can take responsibility of child notwithstanding the nature of the case.

ii. I.O shall verify date of birth on the basis

of school leaving certificate, birth certificate, FRC or any other record from NADRA, Union Council or hospital, as the case may be and submit report before producing the child accused before the Juvenile Court and report must contain:-

(a) Possible effort to apply diversion mechanism.

(b) Inform the Probation Officer to submit diversion process to facilitate and protect the child.

iii. The Courts including the Court of Magistrate or Court of Session, as the case may be in which child accused has been produced shall ask the I.O to submit such a report verifying the age of child on the basis of any public record, calling Probation Officer for his or her report, calling family members, parents, guardian or suitable person including trust, association or society or child welfare and protection department to assess and provide due care if parents and family members are not available for protection of juvenile/child.

iv. Trial court or Court of Magistrate shall

put serious effort not to expose the child for further custody or transmission of accused to jail and must ensure that juvenile/child shall be placed in borstal institution, child care institution with the help of Probation Officer or the child protection department till completion of other legal requirements depending upon the nature of case and shall also direct the Juvenile Justice Committee to submit a plan of action for all diversion mechanism while considering the psychological needs of the child and must seek a report from the Committee or the Probation Officer or Child Protection Department to inspect and visit the home and family members of the child or the observation home or juvenile rehabilitation centre to verify the measures taken for welfare and social integration of the child kept under supervision.

v. The Juvenile Court shall also pass direction to the Probation Officer to submit a report in line with Section 14 of the Act.

vi. The Juvenile Court or the Magistrate

before whom juvenile or child has been produced shall also ensure the right of legal assistance at the expense of State to be provided to the juvenile/child before passing any judicial order.

vii. The Juvenile Court, Court of Magistrate or any other Court before which juvenile has been produced shall inform the juvenile about his/her legal rights available under the law and in case if no legal assistance has been provided which is responsibility of the State free of cost, in such scenario, court can appoint any legal practitioner for provision of legal assistance to a child/ juvenile under the law.

viii. The trial Court, Juvenile Court or Magistrate must pass release order of every child while considering and applying the legal concept in terms of JJSA, 2018 and only refuse the release of juvenile subject to parameters highlighted for heinous offence in terms of Section 2(g) of the Act.

ix. The Juvenile Court shall not keep the case for release of any juvenile accused pending/waiting for an application

under the law for release of the juvenile to be filed at the first instance rather pass an order at its own.

x. Chief Commissioner, ICT shall submit a list of Probation Officer, Legal Practitioners, State Counsel and institution notified for juvenile rehabilitation including the Managers details, Psychologists, or other institution along with Juvenile Justice Committee to every police station as well as all courts of Islamabad to ensure that this complete juvenile protection eco system can perform their legal function in terms of International commitment for application of diversion plan at the initial stage of arrest of juvenile irrespective of the offence in order to achieve the security, welfare and protection of the juvenile/child right.

xi. Chief Commissioner, ICT as well as Inspector General of Police, District & Sessions Judges, MIT shall ensure the application of all these directions under their administrative hierarchy and non-compliance of JJSA, 2018 or the

International commitment under Child Rights Convention shall be considered as misconduct on administrative as well as on legal side and report shall be referred to this court on quarterly basis in a tabulated manner with detail of cases, its progress and order of release applying the diversion and other services provided to the juvenile accused.

12. These are the reasons of my short order of even date.

**(MOHSIN AKHTAR KAYANI)**
**JUDGE**

**Zahid**

***Approved for Reporting***