

Form No.HCJD/C-121
ORDER SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Misc. No. 78015/CB/2023

Manzoor Ahmad Vs Muhammad Umar Farooq etc.

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with the signature of the Judge and that of parties or counsel where necessary
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1.4.2024 Mr. Abdul Khaliq Safrani, Advocate, assisted by M/s Muhammad Saad Ullah and Syed Imtiaz Hussain Shah, Advocates, for the Petitioner.
Mr. Rahat Majeed, Assistant District Public Prosecutor, with Amjad/ASI.
Sh. Sajid Mehmood, Advocate, for Respondent No.1.

Tariq Saleem Sheikh, J. – The Petitioner alleges that on 28.9.2023, around 10.00 a.m., when he was on his way home in Chak No.77/RB, Tehsil Jaranwala, Respondent No.1 and his associate, Shahid Nadeem, attacked him. During the incident, Respondent No.1 struck him with a spade on his left arm, and Shahid threw brickbats at him, injuring his back and left thumb. This attack resulted in a fracture to the Petitioner’s left arm. The Medical Officer did not observe any injuries on the back or thumb but determined the injury to the arm as *Jurh Ghair Jaifa Munaqqilah*. The Petitioner lodged FIR No.1952/2023 dated 5.10.2023 at Police Station Khurrianwala, District Faisalabad, against Respondent No.1 and Shahid for offences under section 337-F(vi) and 34 PPC regarding the occurrence.

2. Admittedly, Respondent No.1 was a juvenile at the time of the alleged incident. He was under 18, with the date of birth recorded as 26.2.2006. He applied for his pre-arrest bail. The Additional Sessions Judge, Jaranwala, accepted his plea by an order dated 6.11.2023 on the ground that the offence under section 337-F(vi)/34 PPC is to be treated as bailable under section 6(3) of the Juvenile Justice System Act 2018 (JJSA).

3. The Petitioner contends that the Additional Sessions Judge has misconstrued section 6(3) of the JJSA. Arrest or detention is a

pre-condition for the applicability of this provision. A “major offence” is considered bailable when a juvenile is arrested or detained and approaches the court for bail. According to him, section 6(3) cannot be invoked for the purpose of pre-arrest bail. Through this application under section 497(5) of the Code of Criminal Procedure 1898 (hereinafter referred to as the “Code” or “Cr.P.C.”), he seeks cancellation of the pre-arrest bail of Respondent No.1.

4. Arguments heard. Record perused.

5. The juvenile justice system is a specialized legal framework designed to address the unique needs and circumstances of young individuals who come into conflict with the law.¹ It prioritizes rehabilitation, reintegration, and the best interests of the child.² It contrasts with the adult criminal justice system, which primarily focuses on punishment and deterrence.

6. The origins of the juvenile justice system can be traced back to the late 19th century, with the establishment of the first juvenile court in Chicago in 1899. This system is rooted in the concept of *parens patriae*, which grants the State the authority to intervene on behalf of the child’s welfare when necessary.³ This principle underscores the State’s responsibility to protect and nurture young people, even when they engage in delinquent behaviour. Over time, the juvenile justice system has evolved in response to changing societal attitudes, legal reforms, and research on adolescent development.⁴ The shift towards a more rehabilitative and therapeutic approach gained momentum in the mid-20th century, with landmark U.S. Supreme Court decisions such as *In re Gault*, 387 U.S. 1 (1967), and *In re Winship*, 397 U.S. 358 (1970).⁵ These decisions affirmed the rights of juvenile offenders to due process, including the right to notice, legal representation, and protection against self-incrimination.

¹ Redding, R. E. (2008). Understanding juvenile justice and delinquency. Jones & Bartlett Learning.

² *ibid.*

³ *ibid.*

⁴ Sherman, F. T., & Jacobs, F. H. (1991). Juvenile justice: Advancing research, policy, and practice. Journal of Social Issues, 47(4), 1-12.

⁵ See Note 1, *supra*.

7. International law recognizes the importance of protecting the rights of juveniles in conflict with law. It aims to strike a balance between holding children accountable for their actions and providing them with the support and guidance they need to become productive members of society. The United Nations Convention on the Rights of the Child (UNCRC), adopted in 1989, is the most comprehensive international treaty addressing children's rights, including those in the aforementioned category. In General Comment No.24 (2019),⁶ the Committee on the Rights of the Child⁷ (the "CRC Committee") has stated:

"2. Children differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach. Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.

"3. The Committee acknowledges that preservation of public safety is a legitimate aim of the justice system, including the child justice system. However, States Parties should serve this aim subject to their obligations to respect and implement the principles of child justice as enshrined in the Convention on the Rights of the Child ..."

8. Article 37 of the UNCRC contains fundamental principles regarding child detention. It mandates that States Parties take measures to ensure the following: (a) No child should endure torture or any form of cruel, inhuman, or degrading treatment or punishment. Furthermore, individuals who are under eighteen years of age should not be subjected to capital punishment or life imprisonment without the possibility of release for their offences. (b) No child should be deprived of their freedom unlawfully or arbitrarily. A child's apprehension, confinement, or incarceration must comply with legal provisions and should only occur as a last resort and for the shortest appropriate duration. (c) Every child deprived of liberty should be treated with dignity and humanity. They should be separated from adults unless it is deemed in their best interest not to do so. They should have the right to maintain contact with their family through correspondence and visits, unless extraordinary circumstances warrant otherwise. (d) Every child deprived of liberty

⁶ General Comment No.24 (2019) on children's rights in the child justice system. CRC/C/GC/24. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>

⁷ A body of independent experts that monitors implementation of UNCRC by its States Parties.

should have prompt access to legal and other necessary assistance. They should also have the right to contest the legality of their detention before a court or another competent, impartial authority, with a guarantee of swift resolution. In General Comment No.24 (2019), *supra*, the CRC Committee has stated:

“86. ... Pretrial detention should not be used except in the most serious cases, and even then only after community placement has been carefully considered. Diversion at the pretrial stage reduces the use of detention, but even where the child is to be tried in the child justice system, non-custodial measures should be carefully targeted to restrict the use of pretrial detention.

“87. The law should clearly state the criteria for the use of pretrial detention, which should be primarily for ensuring appearance at the court proceedings and if the child poses an immediate danger to others. If the child is considered a danger (to himself or herself or others) child protection measures should be applied. Pretrial detention should be subject to regular review and its duration limited by law. All actors in the child justice system should prioritize cases of children in pretrial detention.

“88. In application of the principle that deprivation of liberty should be imposed for the shortest appropriate period of time, States Parties should provide regular opportunities to permit early release from custody, including police custody, into the care of parents or other appropriate adults. There should be discretion to release with or without conditions, such as reporting to an authorized person or place. The payment of monetary bail should not be a requirement, as most children cannot pay and because it discriminates against poor and marginalized families. Furthermore, where bail is set it means that there is a recognition in principle by the court that the child should be released, and other mechanisms can be used to secure attendance.”

9. Article 40 of the UNCRC emphasizes the right of every child to be treated in a manner consistent with the promotion of their sense of dignity and worth, which reinforces their respect for human rights and the fundamental freedoms of others. The Article stipulates that children accused of breaking the law should only be charged for acts that were illegal when committed, and they must be presumed innocent until proven guilty. It mandates prompt notification of charges, access to legal assistance, and a fair trial conducted by an impartial authority. The Article also prohibits coercion to confess guilt and ensures the right to challenge evidence and have decisions reviewed. It emphasizes the need to respect children’s privacy throughout legal proceedings. Furthermore, the Article promotes the establishment of specialized laws and procedures for juvenile offenders and suggests non-judicial approaches when

appropriate, provided human rights and legal safeguards are upheld. Lastly, it advocates for various interventions, including counselling and education programs, to address the well-being of children involved in legal matters proportionately to their circumstances and the severity of the offence. In General Comment No.24 (2019), *supra*, the CRC Committee has stated: “Evidence shows that the prevalence of crime committed by children tends to decrease after the adoption of systems in line with these principles.”

10. Besides UNCRC, several other international instruments provide guidance and standards for the treatment of juveniles in the justice system.⁸

11. Pakistan ratified UNCRC on 12.11.1990. Thus, as a part of its international commitments, it is obligated to take special measures to protect the child and safeguard the child’s best interest, including those in conflict with the law. In *Khawar Kiyani v. The State and others* (PLD 2022 SC 551), the Supreme Court of Pakistan ruled that the juvenile justice system in our country also has its “ideological roots” in the Constitution of 1973. It highlighted that Article 25(3) of the Constitution allows the State to make special provisions for safeguarding children, even if they result in discrimination against adults (reverse discrimination⁹). Additionally, Article 35 mandates the State to protect children.

12. In compliance with the above-mentioned constitutional mandate and for the fulfilment of its international obligation, Pakistan enacted the Juvenile Justice System Ordinance in 2000, which was later

⁸ These include: Further international juvenile justice standards and norms are contained in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), the Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines), the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, the Standard Minimum Rules for the Treatment of Prisoners, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. The General Comments of the Committee on the Rights of the Child (CRC Committee) must also be mentioned as sources of guidance and recommendations to States Parties in their efforts to establish an administration of juvenile justice in compliance with the CRC. (Source: Justice in Matters Involving Children in Conflict with the Law. Model Law on Juvenile Justice and Related Commentary. https://www.unodc.org/documents/justice-and-prison-reform/Justice_Matters_Involving-Web_version.pdf).

⁹ Reverse discrimination is a term for discrimination against members of a dominant or majority group in favour of members of a minority or historically disadvantaged group etc.

replaced by the Juvenile Justice System Act in 2018 (JJSA). It rests on the concept of “best interest of the child”, which according to section 2(a) of the Act, means “the basis for any decision taken regarding the child to ensure fulfilment of his basic rights and needs, identity, social well-being, physical, emotional and psychological development.”

13. Truly speaking, “the best interests of the child” is a dynamic and continually evolving concept. General Comment No.14 (2013)¹⁰ provides a framework for assessing it in any given situation. The CRC Committee has stated that it has three dimensions: (a) a substantive right, (b) a fundamental interpretative legal principle, and (c) a rule of procedure. The “substantive right” ensures that children have their best interests evaluated and given paramount consideration in decision-making processes, applicable to individual children, specific groups, or children in general, as Article 3, paragraph 1 of UNCRC mandates. As a “fundamental interpretative legal principle”, it dictates that if a legal provision is open to more than one interpretation, the construction which most effectively serves the child’s best interests should be chosen, guided by the rights enshrined in the Convention and its Optional Protocols. As a “rule of procedure”, it mandates that whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child requires procedural guarantees. The Committee emphasizes that in criminal proceedings, the best interests principle applies to children in conflict (i.e. alleged, accused or recognized as having infringed) or in contact (as victims or witnesses) with the law, as well as children affected by the situation of their parents in conflict with the law. The CRC Committee underlines that the traditional objectives of criminal justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives when dealing with child offenders.

¹⁰ General Comment No.14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. CRC/C/GC/14. https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf

14. Clause (b) of section 2 of JJSA defines “child”, for the purpose of the Act, as a person who has not attained the age of eighteen years. Clause (h) states that “juvenile” means a child who may be dealt with for an offence in a manner which is different from an adult. According to clause (i) of the aforesaid section, “juvenile offender” means a child who is alleged to have committed or who has been found to have committed an offence.” Consequently, the JJSA applies to individuals under eighteen years old. When determining the juvenility of an accused, the date of the crime is crucial, not his age at the time. An accused has to be dealt with under the law as applicable on the date when the crime is committed.¹¹

15. The JJSA classifies offences into three categories: heinous, major, and minor. According to section 2(g) of the Act, “heinous offence” means an offence which is serious, gruesome, brutal, sensational in character or shocking to public morality and which is punishable under the Pakistan Penal Code, 1860 (PPC) or any other law for the time being in force with death or imprisonment for life or imprisonment for more than seven years with or without fine. Section 2(m) states that “major offence” means an offence for which punishment under the PPC or any other law for the time being in force is more than three years and up to seven years imprisonment with or without a fine. Section 2(o) states that “minor offence” means an offence for which the maximum punishment under the PPC or any other law for the time being in force is imprisonment for up to three years with or without a fine.

16. Section 5 of the JJSA stipulates the procedure to be followed when a juvenile offender is arrested. Section 6 of the Act provides for his release on bail during the pendency of the case against him. It is reproduced below for ease of reference:

6. Release of a Juvenile on bail.– (1) Notwithstanding anything contained in the Code [of Criminal Procedure 1898], 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

¹¹ *Sahib Ullah v. State and others* (2022 SCMR 1806).

juvenile shall be placed under the custody of a suitable person or Juvenile Rehabilitation Centre 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 purpose 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 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.

17. Section 6(1) of the JJSA provides that a juvenile accused of a bailable offence shall be released by the Juvenile Court on bail 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 or Juvenile Rehabilitation Centre under the supervision of a probation officer. The juvenile shall not under any circumstances be kept in a police station under police custody or jail in such cases. In *Alam Zeb and another v. The State and others* (PLD 2014 SC 760), the Supreme Court held that bail is to be granted to the accused as a matter of right in a case involving a bailable offence.

18. Section 6(3) of the Act provides for treating the “minor offences” and “major offences” as bailable. Section 6(4) provides that where a juvenile is more than sixteen years of age and is arrested or detained for a heinous offence, he may 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. Even in cases involving heinous offences under section 6(5), the juvenile must be released on bail if he is under detention for a continuous period exceeding

six months, his trial is not completed, and he is not responsible for the delay. The said period is to be counted from the date of the juvenile's arrest.¹²

19. In *Khawar Kiyani*, the Supreme Court observed that section 6 of the JJSA actualizes Article 37(b) of the UNCRC.

20. Section 23 of the JJSA provides that the provisions of this Act shall have overriding effect notwithstanding anything contained in any other law for the time being in force. This means that if there are any inconsistencies or contradictions between the JJSA and other existing laws, the regulations specified within the JJSA will supersede and take precedence. Generally, if the provisions of the JJSA do not explicitly address a particular matter or are not inconsistent with the general law, i.e. the Code of Criminal Procedure Code, the latter may apply. Section 5(2) Cr.P.C. also supports this view. It provides that all offences under any law other than the PPC shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions of the Code, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offence.

21. The JJSA does not explicitly mention anticipatory bail. However, following the legal principle discussed in the previous paragraph, this omission does not automatically prevent juveniles from pursuing it under the Code. A juvenile at risk of arrest can seek pre-arrest bail under section 498 Cr.P.C. This provision remains applicable and available to such offenders.

22. In the present case, Respondent No.1 is admittedly a juvenile and is accused of an offence under sections 337-F(vi)/34 PPC. The said offence is classified as a "major offence" under the JJSA. It is punishable with *Daman* and imprisonment of either description for a term which may extend to seven years as *Ta'zir*. The prison sentence is in the court's discretion. This offence is non-bailable according to Schedule II of the Code. The decision to grant bail hinges on the nature of the offence.

¹² *Khawar Kiyani v. The State and others* (PLD 2022 SC 551)

Under the Code, bail is granted as a matter of right in bailable offences but becomes subject to the court's discretion in cases of non-bailable offences.

23. As adumbrated, section 6(3) of the JJSA mandates that it is to be treated as bailable. The Petitioner's contention is that the benefit of section 6(3) cannot be extended to the juvenile if he applies for pre-arrest bail. He argues that the words "arrested or detained" in section 6(3) denote that a juvenile must be in custody before section 6(3) can be applied to him. To put it differently, the benefit of this provision can only be granted to the juvenile when he seeks post-arrest bail.

24. The JJSA can be classified as both remedial and beneficial legislation. On the one hand, the Act aims to remedy deficiencies within the juvenile justice system by establishing procedures and standards for the treatment of juvenile offenders. It seeks to ensure that juveniles are treated fairly, provided with necessary support and services, and given opportunities for rehabilitation and reintegration into society. In this sense, it is a "remedial legislation". On the other hand, by prioritizing the rights and rehabilitation of juvenile offenders, the Act contributes to their overall well-being and aims to prevent further harm or injustice. Therefore, it can also be considered a form of "beneficial legislation".

25. Notably, the JJSA also aligns with the concept of "social welfare legislation" because of its broader implications for promoting the well-being of juveniles and society as a whole.

26. In interpreting the JJSA, courts would begin by examining the Act's plain and ordinary meaning and text. However, where there is an ambiguity, they may apply the "mischief rule" or the "purposive approach" to determine the legislative intent. Coke elucidated the mischief rule in *Heydon's case*¹³ as follows:

"It was resolved by them that for the sure and true interpretation of all statutes in general be they penal or beneficial, restrictive or enlarging of the common law...the obligation of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to

¹³ (1584) Co Rep 7a, 7b.

the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*. This rule is popularly known as the ‘mischief rule’. In a broader sense, this may be understood as the purposive construction of statutes.”

27. *Bennion on Statutory Interpretation* states: “Parliament is presumed to intend that in construing an Act the court, by advancing the remedy which is indicated by the words of the Act for the mischief being dealt with, and the implications arising from those words, should aim to further every aspect of the legislative purpose. A construction promoting the remedy Parliament provided to cure a particular mischief is now known as a purposive construction ... The purpose or object of Parliament in passing an Act (the legislative purpose) is to provide an appropriate *remedy* to serve as a cure for the *mischief* with which the Act deals. The legislative purpose of a particular enactment contained in an Act is to be arrived at accordingly. In particular, it is deemed to be to remedy the mischief to which *that enactment* is directed.”¹⁴ According to Lord Wilberforce, consideration of the purpose of an enactment is always a legitimate part of the process of interpretation.¹⁵ Lord Diplock said, “ ‘Purpose’ connotes an intention by some person to achieve a result desired by him”.¹⁶ In *Pepper v. Hart* (1993) 1 All ER 42, 50, Lord Griffith observed:

“The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach to give effect to the true purpose of legislation.”

28. Remedial and beneficial statutes are liberally construed, and in cases of doubt or ambiguity, the construction that will best advance the objectives of the statute is adopted. *N.S. Bindra’s Interpretation of Statutes* states:

“When the legislative intention aims to provide benefit, then the courts read the text differently from how they read it when the intention is to effect deprivation ... It is the duty of the court to interpret a provision, especially a beneficial provision, liberally so as to give it a wide meaning rather than a restrictive meaning which would negate the very object of the rule. A beneficial piece of legislation has to be construed in its true perspective so as to fructify the legislative intent underlying

¹⁴ *Bennion on Statutory Interpretation*, Sixth Ed. (LexisNexis), p.846

¹⁵ *Fothergill v. Monarch Airlines Ltd.* [1981] AC 251 at 272

¹⁶ *Sweet v. Parsley* [1970] AC 132 at 165

its enactment. When two views are possible on the applicability of a legislation, the one which furthers the legislative intent should be preferred to the one which frustrates it.”¹⁷

29. Given the above, courts should adopt a holistic and purposive approach while interpreting the JJSA, considering its remedial objectives in reforming the juvenile justice system and its beneficial aims in promoting the well-being of juvenile offenders and society. In doing so, they should be guided by the above international standards and principles.

30. When construing section 6 of the JJSA, courts would also consider the principle of lenity, which suggests that they should lean towards the interpretation favouring the accused. In **Province of Punjab and another v. Muhammad Rafique and others** (PLD 2018 SC 178), the Supreme Court stated:

“It is almost settled by now that whenever a penal statute requires interpretation, then it shall be so interpreted, which favours the accused person and not the prosecution or the State. Two interpretations of a statute should be interpreted in such manner that the interpretation favouring the accused should be adopted.”

31. As adumbrated, the JJSA marks a paradigm shift in the treatment of juvenile offenders within the criminal justice system. It modifies and amends the law relating to them by focusing on the disposal of their cases through diversion and facilitating their rehabilitation. Recognizing their unique vulnerabilities and the necessity for support, it provides that all offences except heinous ones are to be treated as bailable. However, the practical application of section 6(3) of the JJSA has raised a critical issue. It would be absurd to say that an offence would be considered bailable when a juvenile applies for post-arrest bail and otherwise if he approaches the court for anticipatory bail. In other words, the bail process should not be contingent upon whether a juvenile is seeking post-arrest bail or anticipatory bail because it would introduce an arbitrary distinction that runs counter to the overarching objectives of the JJSA. A juvenile’s eligibility for bail should be determined based on the nature of the offence and the specific circumstances of the case rather than the procedural mechanism through which bail is sought.

¹⁷ N.S. Bindra’s *Interpretation of Statutes*, 11th Ed. (LexisNexis), p.669

32. The above interpretation of section 6(3) of the JJSA aligns closely with the principles of the best interests of the child, rehabilitation, and fairness as outlined in General Comments No. 14 and 24 of the CRC Committee. Furthermore, it effectively implements the principle that a child's arrest, detention, or imprisonment should be used only as a measure of last resort and for the shortest appropriate period of time.

33. The Additional Sessions Judge has rightly extended the benefit of section 6(3) of JJSA to Respondent No.1 while considering his plea for pre-arrest bail. This application has no merits and is, therefore, **dismissed.**

(Tariq Saleem Sheikh)
Judge

Naeem

Approved for reporting

Judge