Form No.HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT, MULTAN BENCH, MULTAN

JUDICIAL DEPARTMENT

Crl. Misc. No.1629/B/2024

Muhammad Latif alias Kala Vs The State and another

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with the signature of the Judge and that of parties or counsel where necessary
	22.5.2024	Malik Muhammad Usman Bhatti, Advocate, for the Petitioner. Mr. Adnan Latif Sheikh, Deputy Prosecutor General, with Shah Nawaz/SI. Syed Nasir Abbas Bukhari, Advocate, for the Complainant.

"The problem of the delinquent child, though juristically comparatively simple, is, in its social significance, of the greatest importance, for upon its wise solution depends the future of many of the rising generation."[1]

Tariq Saleem Sheikh, J. – Through this application, the petitioner seeks post-arrest bail in case FIR No.348/2023 dated 01.11.2023 registered at Police Station Raitra, District Dera Ghazi Khan, for an offence under section 376(3) of the Pakistan Penal Code 1860 (PPC). Earlier, he applied to the Juvenile Court for the same relief which was refused.

2. Briefly, the allegation against the petitioner is that on 1.11.2023 at about 3:00 p.m., he committed an unnatural offence with the complainant's six-year-old son, M.I.

3. Malik Muhammad Usman Bhatti, Advocate, contends that the petitioner is innocent and the complainant has falsely implicated him in this case due to previous enmity. He further asserts that the petitioner was a little over 11 years old at the time of the alleged occurrence and lacked maturity. Hence, his case falls within the statutory exception

[1] Julian W. Mack. *The Juvenile Court*, Harvard Law Review, Vol. 23, No. 2 (Dec., 1909), pp. 104-122. Stable URL: http://www.jstor.org/stable/1325042

mentioned in section 83 PPC[2], and he is entitled to the relief of post-arrest bail, which he has prayed for.

4. Mr. Adnan Latif Sheikh, Deputy Prosecutor General, has refuted the allegation of false implication. He contends that the petitioner is named in the FIR with a specific accusation. The victim and PWs Muhammad Nadeem and Manzoor Ahmad support the prosecution's case. Their statements have been recorded under section 161 Cr.P.C. which are corroborated by medical evidence. The Deputy Prosecutor General argues that section 83 PPC falls in Chapter IV of the PPC titled "General Exceptions". If the petitioner seeks the benefit of that exception, he must establish that he had not attained sufficient maturity on the alleged date of occurrence. He has to discharge that onus even at the bail stage, which he has failed to do. The Deputy Prosecutor General maintains that the petitioner has committed a heinous offence and is not entitled to bail.

5. The complainant's counsel has adopted the Deputy Prosecutor General's arguments.

6. Arguments heard. Record perused.

7. The petitioner is specifically accused of committing an unnatural offence with six-year-old M.I. on 01.11.2023 around 03:00 p.m. The victim, M.I., and PWs Muhammad Nadeem and Manzoor Ahmad support the prosecution's case, and medical evidence further corroborates them. M.I's medico-legal certificate indicates penetration. During the investigation, the Medical Officer examined the petitioner and confirmed that he was sexually mature. On a tentative assessment of the available evidence, there is sufficient incriminating material against the petitioner.

8. Since the petitioner was around 11 years old at the time of the alleged occurrence, Mr. Bhatti asserts that he lacks the maturity to understand the nature and consequences of his acts and claims that he is

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[2] Section 83 PPC reads as follows:

> 83. **Act of a child above ten and under fourteen of immature understanding.** – Nothing is offence which is done by a child above ten years of age and under fourteen, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.

immune from prosecution under section 83 PPC. It is necessary to examine the specifics of this provision to appreciate the contention.

9. Chapter IV (sections 76 to 106) of the PPC, captioned "General Exceptions", provides a comprehensive framework of defences and justifications that can exonerate individuals from criminal liability under specific conditions. These exceptions play a crucial role in the legal system by recognizing that some unlawful acts, although typically considered offences, are not punishable under certain circumstances.

10. Section 82 PPC states that nothing is an offence done by a child under ten. The legislature considers him incapable of committing an offence and thus provides him with absolute immunity from criminal prosecution. Section 83 PPC extends this protection to children aged between ten and fourteen years but with a significant difference: the exemption applies only if the child has not attained sufficient maturity to understand the nature and consequences of his conduct. This conditional immunity acknowledges that while children in this age group are developing, they may still lack the full capacity to discern right from wrong. Sections 82 and 83 PPC collectively represent a nuanced perspective on juvenile justice, balancing the need for accountability with the recognition of children's developmental phases.

11. Parliament has enacted the Juvenile Justice System Act 2018 (JJSA) to address young offenders' unique vulnerabilities and rehabilitative requirements. It focuses on the disposal of their cases through diversion and social integration for rehabilitation.[3] Section 83 PPC and the JJSA complement each other, providing a coherent framework that safeguards children's rights and contributes to the broader societal goal of reducing recidivism through rehabilitative and restorative justice measures.

12. A fundamental principle of criminal law is that the accused is presumed innocent until proven guilty. Consequently, the burden is on the prosecution to prove the accused's guilt beyond a reasonable doubt. However, if he claims an exception under Chapter IV of the PPC or other

[3] *Khawar Kayani v. The State and others* (PLD 2022 SC 551).

special laws, Article 121 of the Qanun-e-Shahadat 1984 (QSO) requires him to prove the existence of such circumstances which bring the case within that exception. The court "shall presume" the absence of such circumstances.

13. Sub-Articles (7), (8), and (9) of Article 2 explains the phrases "may presume," "shall presume," and "conclusive proof". The term "may presume" indicates that it is within the court's discretion to either draw the referenced presumption outlined in the law or choose not to. The words "shall presume" mandate the court to draw a presumption as specified unless the fact is disproved, establishing a rule of rebuttable presumption. "Conclusive proof" refers to cases where the law determines that any amount of other evidence will not alter the conclusion reached when the basic facts are admitted or proved. In ***M/s Sodhi Transport Co. and another v. State of U.P. and another*** (AIR 1986 SC 1099), the Supreme Court of India stated:

> "A presumption is not in itself evidence but only makes a prima facie case for the party in whose favour it exists. It is a rule concerning evidence. It indicates the person on whom the burden of proof lies. When the presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable, it only points out the party on whom lies the duty of going forward with evidence on the fact presumed, and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of presumption is over. Then, the evidence will determine the true nature of the facts to be established. The rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts and circumstances."

14. When the burden of proof is upon the accused, they must present sufficient evidence, which can be oral, documentary, or any other form. However, unlike the prosecution, which must prove the charge "beyond a reasonable doubt", the accused is not required to meet this stringent standard to succeed in their defence. Instead, they only need to establish their defence based on the civil standard of proof, which is the "balance of probabilities".[4] If this evidence raises reasonable doubt about any element of the offence, the judge must acquit the accused, as the prosecution will have failed to establish guilt conclusively. The Supreme

[4] Michael Allen, *Textbook on Criminal Law*, 7th Edn., p.14

Court of India articulated this legal principle as follows in ***Vijayee Singh and Others v. State of Uttar Pradesh*** (AIR 1990 SC 1459):

> "The general burden of establishing the guilt of accused is always on the prosecution, and it never shifts. Even in respect of the cases covered by section 105 [of the Indian Evidence Act][5], the prosecution is not absolved of its duty of discharging the burden. The accused may raise a plea of exception either by pleading the same specifically or by relying on the probabilities and circumstances obtaining in the case. He may adduce the evidence in support of his plea directly or rely on the prosecution case itself or, as stated above, he can indirectly introduce such circumstances by way of cross-examination and also rely on the probabilities and the other circumstances. Then, the initial presumption against the accused regarding the non-existence of the circumstances in favour of his plea gets displaced. On examining the material, if a reasonable doubt arises, the benefit of it should go to the accused. The accused can also discharge the burden under section 105 by a preponderance of probabilities in favour of his plea. In case of general exceptions, special exceptions, provisos contained in the Penal Code or any law defining the offence, the court, after due consideration of the evidence in the light of the above principles, if satisfied, would state, in the first instance, as to which exception the accused is entitled to, then see whether he would be entitled for a complete acquittal of the offence charged or would be liable for a lesser offence and convict him accordingly."

15. In ***Abdul Sattar and another (minors) v. The Crown*** (PLD 1949 Lahore 372), a case in which a defence under section 83 PPC was raised, the High Court, while deciding the appeal, ruled that the prosecution does not need to present positive evidence demonstrating that a child under 12 years[6] has attained sufficient maturity of understanding under section 83 PPC. Instead, the child's maturity can be inferred from the circumstances of the case. The High Court further stated that exceptions must be specifically pleaded and established by evidence by the accused person. In ***Sheikh Hassan v. Bashir Ahmad and another*** [PLD 1966 (W.P.) Peshawar 97], it was held that "sufficient maturity of understanding" is to be presumed in the case of such a child unless the contrary is proven by the defence, i.e., the burden of proof lies on the accused, above the age of seven and below twelve,[7] to show that he had not attained sufficient maturity.

16. The "burden of proof" concept operates somewhat differently during an investigation than during a trial. Nevertheless, even at the

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[5] Section 105 of the Indian Evidence Act, 1872 parallels Article 121 of Pakistan's Qanun-e-Shahadat 1984.

[6] When this case was decided, section 83 PPC provided that nothing is an offence which is done by a child above seven years of age and under twelve. Section 83 was amended by Act X of 2016.

[7] See note 5

investigation stage, the accused is presumed innocent. During an investigation, the goal is to gather enough evidence to determine if there is a reasonable basis to charge someone with a crime. Investigators aim to establish probable cause or reasonable suspicion, but they are not required to meet the rigorous standards of a trial. In contrast, during a trial, the prosecution must prove the defendant's guilt "beyond a reasonable doubt". This requires presenting compelling evidence to convince the judge or jury, while the defence aims to introduce reasonable doubt. In a nub, the burden of proof during an investigation focuses on justifying charges, whereas during a trial, it is about proving guilt to a high degree of certainty.

17. Section 6 PPC stipulates that all definitions of offences, penal provisions, and illustrations in the Code must be interpreted subject to the exceptions contained in Chapter IV (captioned "General Exceptions"), even if they are not explicitly mentioned in each definition, provision, or illustration. Therefore, the police are obligated to take these exceptions into account during the investigation of a case. If any of them apply, the actions in question cannot be deemed as constituting an offence. In ***A.K. Chaudhary and others v. The State of Gujarat and others*** [2006 Cri.LJ 726 (Gujarat)], the Gujarat High Court ruled that when the police are assessing whether the accusations in a complaint indicate the commission of a cognizable offence, they must consider the General Exceptions outlined in Chapter IV of the Indian Penal Code (IPC).[8] The Court stated that if the allegations in the complaint fall under these general exceptions, the actions cannot be deemed an offence. However, if the allegations do not clearly fall within them, the police should continue their investigation. The ruling emphasized that ignoring the General Exceptions during the investigation could lead to treating actions as offences that are actually exempt under the IPC, thereby nullifying their purpose. Rule 25.2(3) of the Police Rules, 1934, also embodies this principle. It states that it is an investigating officer's duty to discover the truth of the matter under investigation. His objective shall be to discover the actual facts of the case and arrest the real offender or

[8] Chapter IV of the Indian Penal Code mirrors Chapter IV of the Pakistan Penal Code.

offenders. He must not prematurely commit to any view of the facts for or against anyone.

18. It follows from the above discussion that if an accused raises a defence based on exceptions during the investigation, they are required, under Article 121 of the QSO, to provide evidence supporting their claim, meeting the civil standard of proof, which is the balance of probabilities. Investigative authorities are responsible for collecting all relevant evidence, including that presented by the accused, and then submitting a report under section 173 Cr.P.C.

19. If the accused is a juvenile, the provisions of JJSA must be followed during the investigation and trial. Section 5(1)(b) of the JJSA mandates that when a juvenile is arrested, he shall be kept in an observation home. The officer in-charge of the police station shall, as soon as possible, inform the Probation Officer concerned to enable him to obtain such information about the juvenile and other circumstances which may be of assistance to the Juvenile Court. Section 7(2) ordains that the investigating officer, with the assistance of the Probation Officer or a social welfare officer, prepare a social investigation report to be annexed with the report under section 173 Cr.P.C.

20. The principles regarding the burden of proof discussed in paragraph 18 also apply to cases where a juvenile accused is between the ages of ten and fourteen. Thus, the investigating officer must collect evidence to establish the child's maturity level. During the investigation, the prosecution does not need to present direct evidence demonstrating the child's maturity; it can be inferred from the circumstances of the case, as stated in *Abdul Sattar*, supra. If the defence claims the child lacked the requisite maturity, the burden shifts to them to provide supporting evidence. They must meet the civil standard of proof by showing, on a balance of probabilities, that the child did not understand the nature and consequences of their actions. This evidence could include psychological evaluations, testimonies about the child's behaviour, or other relevant documents. If this evidence suggests the child lacked the necessary maturity, it raises reasonable doubt about their criminal responsibility.

The onus shifts to the juvenile accused when preliminary evidence suggests sufficient maturity.

21. 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 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.

22. The classification of heinous, major, and minor offences in the JJSA is based on the severity of the prescribed punishment, not on moral or ethical considerations alone. Since rape, as defined under section 375 PPC, carries a sentence of death or life imprisonment, it unequivocally meets the criteria for a heinous offence.

23. Rape cannot be excluded from the definition of a “heinous offence” by merely categorizing it as an offence of moral turpitude. As adumbrated, the legal definition of heinous offences under the JJSA is strictly tied to the severity of the punishment. Attempting to reclassify rape as solely an offence of moral turpitude to exclude it from the category of heinous offences would not align with the statutory language and intent of the JJSA. Such reclassification could undermine the legal consistency and the intended gravity accorded to the crime of rape within the framework of juvenile justice.

24. Section 5 of the JJSA stipulates the procedure to be followed when a juvenile is arrested. Section 6 of the Act provides for his release on bail during the pendency of the case against him. Section 6(1) of the JJSA states 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. 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 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. 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.[9]

25. Where the age of the juvenile is around 11, and he is accused of a heinous offence, the case may not strictly fall under section 6(3) or section 6(4) of the JJSA. Section 6(3) deals with minor and major offences but does not mention the third category, i.e., heinous offences. On the other hand, section 6(4), although dealing with heinous offences, applies to situations where the juvenile is over sixteen years of age. The issue is of great significance. If the case is treated under section 6(3), he can claim bail as a matter of right even after committing a heinous offence, while in the case of section 6(4), although bail can be granted to him, the juvenile cannot claim such bail as a matter of right, as indicated by the use of the words *"he may not be released on bail"*.

26. ***In the matter of Reference by the President of Pakistan under Article 162 of the Constitution of Islamic Republic of Pakistan*** [PLD 1957 SC (Pak) 219], Muhammad Munir CJ. stated: "Ever since man learnt to express his feelings and thoughts in words, the function of the person to whom the words are addressed, a function of which he is

[9] *Khawar Kiyani v. The State and others* (PLD 2022 SC 551).

scarcely conscious, has been to understand what is intended to be conveyed by the speaker; and ever since the law began to be written the duty of those to whom it is addressed or who are called upon to expound it has been to discover the intention of the lawgiver." His Lordship set out rules for construing statutes and the Constitution, emphasizing that the primary objective in interpreting any written instrument is to discover the author's intention. He *inter alia* stated that the legislature's intention in enacting a statute should be derived from considering the whole enactment to achieve a consistent plan. When a statute contains both specific and general provisions, the specific provisions should take precedence, while the general provisions should apply only to other relevant parts of the statute. Effect should be given to every part, and every word of the statute or Constitution, and courts should avoid interpretations that render any provision meaningless, favouring those that make every word operative. Courts must consider the entire document to determine the true intent and meaning of any specific provision. If different provisions appear contradictory, the court should strive to harmonize them.

27. While analyzing the statute as aforesaid, the courts should first presume that the "legislature chooses its words carefully. Therefore, if a word or phrase has been added somewhere, such addition is not to be deemed redundant; conversely, if a word or phrase has been left out somewhere, such omission is not be deemed inconsequential."[10] Secondly, courts should presume that the legislature does not intend "absurd" consequences to flow from the application of its Act. In this context, "absurd" means contrary to sense and reason. "The presumption leads to avoidance by the interpreter of six types of undesirable consequences: (i) an unworkable or impracticable result; (ii) an inconvenient result; (iii) an anomalous or illogical result; (iv) a futile or pointless result; (v) an artificial result; and (vi) a disproportionate counter-mischief."[11]

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[10] Reference No.01 of 2012 (PLD 2013 SC 279)

[11] Bennion on Statutory Interpretation, Sixth Ed. (LexisNexis), p.869

28. Let's now go back to the JJSA. I have already pointed out that the Act classifies offences into three categories based on their severity and the stipulated punishments – though the age of the offender is also a relevant factor in certain instances. The legislature intends to be lenient with the offender in minor and major offences and harsh in heinous offences. Therefore, it treats all minor and major offences as bailable, notwithstanding anything to the contrary contained in the Code of Criminal Procedure or other statute, as the case may be. The legislative intent is that the bail of juveniles accused of heinous offences should be considered on merits. In this respect, the following observations of the Supreme Court which it made in ***Khawar Kayani v. The State and others*** (PLD 2022 SC 551), are instructive:

> "Section 6(4) of the Act provides that where a juvenile is more than sixteen years of age and 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(4) deals with the bail of juveniles under a heinous offence on merits, a separate provision provides for bail to the same juveniles where they have been detained for a continuous period exceeding six months and whose trial has not been completed. Under the Act, only in a case involving "heinous offence" can a juvenile be detained in a police station or a jail. Thus, it can safely be concluded that section 6(5) of the Act does apply, rather solely applies, to a case involving a "heinous offence", irrespective of the age of the juvenile. Section 6(5) in effect works as a proviso to section 6(4) and appears to have no other purpose under the scheme of the Act. The approach of the trial court, in the present case, to decline benefit of section 6(5) of the Act to the petitioner merely by observing that the offence is "heinous" is not legally correct; this subsection is meant for, and only applies to, a case involving "heinous offence". To hold otherwise will render section 6(5) redundant and unnecessary."
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> (emphasis added)

29. If the classification of the offences is based on the age of the offender, the JJSA's scheme would be disturbed. It would reduce the offences to two categories: (a) offences, whether minor, major or heinous, committed by an offender up to sixteen years, and (b) the offences of a heinous nature committed by an offender above the said threshold of sixteen years.

30. In conclusion, the JJSA does not inherently exhibit leniency towards heinous offences. The legislative intent is that the bail decisions for juveniles accused of such offences should be based on the merits of

each case. This approach allows the court to consider factors such as the nature of the offence, the juvenile's age, circumstances, and the potential threat to public safety before granting or denying bail. This nuanced treatment underscores a balanced approach – promoting rehabilitation for less severe offences while ensuring public safety and accountability for more serious crimes.

31. 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. If the JJSA does not explicitly address a particular matter, the general law, i.e. the Code of Criminal Procedure, would 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.

32. Section 497 Cr.P.C. specifies the conditions under which bail may be granted in non-bailable cases. Sub-section (1) of this provision states that when any person accused of a non-bailable offence is arrested or detained without a warrant by an officer in charge of a police station or appears or is brought before a court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years. However, the first proviso to section 497 states:

> Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

33. The Supreme Court considered the first proviso to section 497 Cr.P.C. in ***Tahira Batool v. The State and another*** (PLD 2022 SC 764) and held that in cases of an accused under sixteen

years, a woman or any sick or infirm person, irrespective of the category of offence, the bail is to be granted as a rule and refused as an exception. The relevant excerpt is reproduced below:

> "However, the first proviso to section 497(1) Cr.P.C. provides that the court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail. The expression 'such an offence' used in this proviso refers to the offence mentioned in the second part (prohibitory clause) of section 497(1) Cr.P.C., as for all other non-bailable offences the court is already empowered to release the accused on bail under the first part of section 497(1) Cr.P.C. The first proviso has thus made equal the power of the court to grant bail in the offences of prohibitory clause alleged against an accused under the age of sixteen years, a woman accused and a sick or infirm accused, to its power under the first part of section 497(1) Cr.P.C. This means that in cases of women, etc., as mentioned in the first proviso to section 497(1), irrespective of the category of the offence, bail is to be granted as a rule and refused as an exception[12] in the same manner as it is granted or refused in offences that do not fall within the prohibitory clause of section 497(1) Cr.P.C."

The above view was reaffirmed in ***Mst. Ghazala v. The State and another*** (2023 SCMR 887).

34. It is neither possible nor advisable to enumerate all the "extraordinary and exceptional circumstances" that *Tahira Batool* and *Mst. Ghazala* contemplated. However, the case of ***Tariq Bashir and others v. The State*** (PLD 1995 SC 34) provides some examples. These are: (a) where there is a likelihood of the accused absconding; (b) where there is apprehension that the accused will tamper with the prosecution evidence; (c) where there is a danger of the offence being repeated if the accused is released on bail; and (d) where the accused is a previous convict.

35. In the present case, the petitioner was around eleven at the time of the alleged occurrence. According to the FIR, he was found committing sodomy with M.I. while grazing goats in the fields. The investigating officer has not investigated the circumstances preceding the incident which were necessary to establish *mens rea*. He has also not obtained the reports under sections 5(1)(b) and 7(2) of the JJSA, although they were mandatory. Given that the petitioner's age is closer to the lower end of the 10 to 14 age bracket, more convincing evidence is required to

[12] See: *Fazal Elahi v. Farah Naz* (1979 SCMR 109); *Liaquat Ali v. Bashiran Bibi* (1994 SCMR 1729); and *Zakir Jaffer v. State* (2021 SCMR 2084).

establish his maturity level, even at the investigation stage. This is because younger children are generally presumed to lack the maturity to understand the nature and consequences of their actions thoroughly. If a child is closer to 14 years old, the presumption might lean more towards the likelihood of sufficient maturity, thus requiring comparatively less rigorous evidence to establish this maturity. For all these reasons, further inquiry is needed to determine the petitioner's guilt. In ***Resham Khan and another v. The State and another*** (2021 SCMR 2011), the Supreme Court held:

> " … further inquiry is a question which must have some nexus with the result of the case for which a tentative assessment of the material on record is to be considered for reaching just conclusion. The case of further inquiry pre-supposes the tentative assessment which may create doubt with respect to the involvement of accused in the crime. It is well settled that object of trial is to make an accused to face the trial and not to punish an under-trial prisoner. The basic idea is to enable the accused to answer criminal prosecution against him rather than to rot him behind the bar. Every accused is innocent until his guilt is proved, and the benefit of doubt can be extended to the accused even at bail stage if the facts of the case so warrant. The basic philosophy of criminal jurisprudence is that the prosecution has to prove its case beyond reasonable doubt and this principle applies at all stages including pre-trial and even at the time of deciding whether accused is entitled to bail or not."

36. In addition to the need for further investigation to determine the petitioner's guilt, the case also falls under the first proviso of Section 497(1) Cr.P.C. According to the Supreme Court's ruling in *Tahira Batool* and *Mst. Ghazala*, granting bail to a juvenile of his age is the norm, while refusal is the exception. There are no exceptional circumstances in the present case for which bail may be withheld. Therefore, this application is **allowed**. The petitioner is admitted to post-arrest bail subject to his furnishing bail bond of Rs.200,000/- (Rupees two hundred thousand) with two sureties in the like amount to the trial court's satisfaction.

37. Before concluding this order, I would acknowledge the assistance provided to me by Mr. Adnan Latif Sheikh, Deputy Prosecutor General.

(Tariq Saleem Sheikh)
Judge

Naeem

Approved for reporting

Judge