

**ORDER SHEET**

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
JUDICIAL DEPARTMENT

**W.P No. 1096 of 2015**

Shafqat Hussain.

***Vs***

The President of the Islamic Republic of Pakistan, etc.

**PETITIONER BY** : Mr. Tariq Hassan & Syed Buland Sohail, Advocates.

**RESPONDENTS BY** : Mian Abdul Rauf, Advocate General ,Islamabad.  
Mr. Muhammad Waqar Rana & Mr. Afnan Karim  
Kundi, Additional Attorney General.  
Mr. Muhammad Shafaqat Jan & Syed Hasnain  
Ibrahim Kazmi, Deputy Attorney General.  
Mr. Muhammad Javaid Iqbal, Standing Counsel.  
Mr. Abdul Sattar Khokar, JS, M/O Interior.  
Syed Safeer Hussain Shah, D.S, M/O Interior.  
Sh. Ijaz Ahmed, AD, FIA.

**DATE OF HEARING** : **08-05-2015.**

**ATHAR MINALLAH, J:-** Shafqat Hussain S/o Shah Zaman

(hereinafter referred to as the "***Petitioner***"), who is imprisoned at the Central Jail Karachi, is awaiting the execution of his sentence. The petitioner was arrested in a criminal case registered as FIR No.136/2004 dated 21-05-2004, at Police Station Gulshan-e-Iqbal Town, Karachi (hereinafter referred to as the "***FIR***").

2. The events, narrated in the FIR, relate to the kidnapping for ransom of the seven year old son of the complainant. According to the prosecution, after the registration of the FIR and during investigations, the petitioner had confessed and thereafter led the investigators to the place

where the body of the victim had been dumped. The body of the deceased victim, a pair of footwear he was wearing at the time of disappearance and the hammer which caused his death were also recovered from places identified by the petitioner. His confessional statement was recorded by a competent Judicial Magistrate, who had also appeared as a witness during the trial. The trial of the accused was conducted by a competent Court. The petitioner engaged the professional services of an experienced counsel, who conducted the trial on his behalf. It is evident from the judgment of the trial court that the prosecution produced six witnesses and the relevant evidence was exhibited. Court witnesses were also examined, and the petitioner preferred to record his statement under Section 342 (1) of the Criminal Procedure Code, 1898 (hereinafter referred to as the "Cr.P.C") rather than being examined under oath. The said statement of the petitioner was recorded on 26-08-2004 by the learned trial court, in the presence of his counsel, and unequivocally his age has been recorded as '23 years'. The learned Trial Court, after an exhaustive analysis of the evidence, convicted the accused and awarded him the death sentence, inter alia, under Section 302 (b) of the Pakistan Penal Code 1860 (hereinafter referred to as the "**PPC**"). The learned Trial Court forwarded the reference to the Sindh High Court. An appeal was also preferred by the petitioner. The High Court of Sindh confirmed the death sentence vide judgment dated 05-05-2006. The petitioner filed a Criminal Appeal No.146 of 2007 before the august Supreme Court, which was heard and dismissed by a Bench consisting of four Hon'ble Judges vide order dated 08-10-2007. The petitioner was represented by a counsel. A review was sought, mainly on the ground that the petitioner was less than 16 years of age at the time of the commission of the offence, and the said review was dismissed vide order dated 08-01-2008. The relevant portion of the order is as follows:-

*"The review of the judgment is being sought  
mainly on the ground that petitioner was less 16*

*years of age at the time of occurrence which aspect of the case was not considered in true prospects. The question of age was not raised at any stage and the same cannot be agitated in review. The perusal of record would not suggest any valid ground for review. This petition is accordingly rejected”.*

3. The mercy petition filed by the petitioner was dismissed by the President of Pakistan on 03-07-2012. The petitioner did not challenge the dismissal of his mercy petition. According to the learned law officers appearing on behalf of the Federation, the execution of the death sentence was suspended on the directions of the respondent no. 3, after some sections of society raised their concerns regarding the case of the petitioner. It is stated that initially the issue was raised in an article published in the foreign press. A copy of the article is attached, with the comments filed on behalf of the Federation. Pursuant to the direction of the Federal Minister of Interior i.e. respondent No. 3, the Federal Investigation Agency conducted an inquiry to verify the claims made on behalf of the petitioner. It appears from the documents placed on record, by both the petitioner as well as the respondents, that the Executive Director of the Justice Project Pakistan was pursuing the case on behalf of the petitioner during the course of the inquiry conducted by the Federal Investigation Agency. The petitioner approached the High Court of Sindh, by invoking the jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "**Constitution**"). The Constitutional Petition No.D-561 of 2014 was dismissed by the High Court of Sindh vide order dated 23-12-2014. The order was not assailed by the petitioner, and instead the instant petition has been filed by invoking the jurisdiction of this Court, seeking the following relief to:-

- a. *Declare that the age of the Petitioner shall only be determined by a duly constituted judicial inquiry, as mandated in law;*
- b. *Direct the Respondent No.1 and Respondent No.2 to duly confirm the constitution and membership of the Respondent No.9;*
- c. *Direct the Respondent No.9 to initiate an inquiry to determine all the human rights violations of the Petitioner, as contained in the complaint submitted to Respondent No.9, mercy petitions submitted to Respondent No.1 and all other supporting claims/documents that may be filed in relation to such inquiry including inter alia determination of age of the petitioner;*
- d. *Declare that the enquiry committee of Respondent No.3 and Respondent No.4 is unlawful and direct said Respondent to submit before this Hon'ble Court all record, documents, statements, affidavits, information, noting, minutes and supporting information/documents in relation to the said enquiry with respect to the Petitioner, and declare the same as null and void and of no legal effect;*
- e. *Permanently restrain the Respondent No.3 from carrying out any further investigation under the impugned enquiry and submit all*

*findings/reports or any information gathered/correspondence had in relation thereto before this Hon'ble Court;*

*f. Permanently restrain the Respondent No.3 from carrying out any further investigation under the impugned enquiry and submit all findings/reports or any information gathered/correspondence had in relation thereto before this Hon'ble Court;*

*g. Directed that the Respondents be restrained from taking any adverse action detrimental or prejudicial to the Petitioner during the pendency of the instant Writ Petition or until a final decision of the same; and grant any other relief that this Hon'ble Court deems fit and proper".*

4. Dr. Tariq Hassan, Advocate Supreme Court, argued on behalf of the petitioner and contended that; the petitioner does not in any way assail the judgments and orders passed by the Supreme Court, High Court of Sindh or the Trial Court; the petitioner merely seeks the judicial determination of his age for the limited purpose of seeking a remedy under Article 45 of the Constitution; the purpose of the petition is not to set-aside the conviction, rather it is to seek the enforcement of the constitutional right under Article 45 of the Constitution; the executive inquiry conducted by the respondent No.4 on the direction of the respondent No.3 is unlawful and improper, and as such void; two mercy petitions before the President of Pakistan are pending; the Supreme Court has not made any determination of the age of the petitioner, and that the review petition was dismissed in limine; the order of

the Supreme Court does not preclude the right of the petitioner to have his age determined for the purposes of Article 45 of the Constitution; the purpose of having the petitioner's age determined is to ensure that he does not become a victim of a miscarriage of justice; the petitioner is entitled to due process under Article 10-A, which extends to the stage of the exercise of Presidential powers under Article 45 of the Constitution; despite having been convicted, the petitioner is entitled to assert his fundamental rights guaranteed by the Constitution; the petition relates to a matter of life and death of the petitioner; the petitioner is an aggrieved person in the context of under Article 199 of the Constitution; he has no other adequate remedy under the law; neither the respondent No.3 nor the respondent No.4 are legally empowered to determine the age of the petitioner; remedy by way of determination of age under Section 7 of the Juvenile Justice System Ordinance, 2000 (hereinafter referred to as the "***Ordinance of 2000***") is no longer available to the petitioner; relying on the case of "Ziaullah Versus Najeebullah and others", ***P L D 2003 SC 656***, it has been argued that the determination of age is to be made by a judicial forum; the execution of the sentence is in violation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; Article 9 of the Constitution guarantees the right to life, and in support reliance has been placed on "Shehla Zia" case ***P L D 1994 SC 693***; Article 45 vests the powers in the President to grant pardon or commute the sentence, for which reliance is placed on "Nazar Hussain vs. The State, ***P L D 2010 Supreme Court 1021***"; reliance was placed on "Satrughan Chauhan vs. Union of India & Others", ***(2014) 3 SCC 1***; reliance has been placed on the "UN Declaration of Human Rights", particularly Article 25, 25-A, 26, 35, 37 thereof; exceptional treatment is to be given to children; determination of the age and issuance of a birth certificate is the obligation of the State; there is a right to be protected against double punishment; reliance has been placed on judgments from the jurisdiction of the United States i.e. "Schulp vs Delo",

**513 U.S 298, 317 (1995)**, "Roper vs. Simmons", **543 U.S 551 (2005)** in support of the contention that a habeas corpus petition can be filed raising the question of juvenile status; reference has been made to "Bhai Khan vs. The State", **P L D 1992 SC 14** in support of the argument that the President is to exercise power under Article 45 to afford relief against undue harshness, or serious mistake or miscarriage of the judicial process; reference has also been made to "Abdul Malik vs. The State", **P L D 2006 SC 365**, "Nazar Hussain vs. The State", **P L D 2010 SC 1021**. The learned counsel submitted written arguments in addition to arguing the case at the Bar.

5. Mr. Muhammad Waqar Rana, Additional Attorney General, has argued that; the petition is not maintainable in the light of Article 248 of the Constitution; the petition is also not maintainable under Article 174 of the Constitution; the question regarding the conviction and sentence has attained finality; the question of age was not raised by the petitioner at any stage till the review was filed; the review order unambiguously referred to the question of age and dismissed the petition; the High Court is not vested with the power to reopen, or in any manner review a final order passed by the apex Court; the petitioner had concealed from this Court that the Sindh High Court, vide order dated 23-12-2014, had dismissed the petition; no matter is pending before the President under Article 45 of the Constitution, nor has any prayer been made by the petitioner with regard to seeking a writ in the context of the said provision; the inquiry was initiated by the Minister of Interior merely to satisfy himself regarding the veracity of the publication of an article in the foreign press; the article published in the foreign press was merely intended to stall the execution, and was based on factually incorrect assertions; no right vests in the petitioner, nor has any fundamental right been violated; the law laid down by the august Supreme Court in the *Ziaullah* case, supra, is not applicable in the instant case, since neither has any order been passed by the President under Article 45 of the Constitution, nor has

any Court of competent jurisdiction passed a direction; reliance has been placed on "Muhammad Jamil vs. The State and 3 others", **2004 SCMR 1871**, "Sarfraz alias Shaffa vs. The State and 3 others", **2007 S C M R 758**; disputed questions of fact have been raised, and the same cannot be adjudicated while exercising powers under Article 199 of the Constitution.

6. Mian Abdul Rauf, learned Advocate General Islamabad has contended that; the petition is misconceived and not maintainable; the mercy petition of the petitioner has been dismissed; the intent and purpose of the inquiry conducted by the Federal Investigation Agency, pursuant to the direction of the Ministry of the Interior, was not to determine the age of the petitioner, rather it was only to the extent of examining the veracity of some claims made by a civil society organization; it is evident from the photographs and the record that the petitioner was not a juvenile at the time of the commission of offence; the petitioner had never raised this issue till the time when the august Supreme Court was hearing the review.

7. The learned counsels have been heard and the written submissions and the record perused.

8. It is not in dispute that the question of age was for the first time raised by the petitioner during the review proceedings before the august Supreme Court. The plea of the petitioner was that he was less than 16 years old at the time of occurrence. It is also not in dispute that no miscarriage of justice was caused on account of denying a fair trial to the petitioner. The arguments advanced by the learned counsel for the petitioner and the record unambiguously establishes that the petitioner was duly represented by a competent counsel engaged by him. There is no allegation whatsoever, nor any assertion by the petitioner that either he was denied a fair trial, or that there was a violation of due process at any stage of the trial, or before the hierarchy of the appellate forums. His full and proper participation in the trial



proceedings, ensuring that his right to defense and fair trial were safeguarded, are not only evident from the record, but admitted by him through his assertions in the petition, as well as the unambiguous statement made at the Bar by his learned counsel, in response to a query of this Court as to whether the petitioner had any doubt that he may not have had a fair trial. The answer was emphatically in the negative. It is also an admitted fact that his confessional statement was recorded by a Judicial Magistrate, who appeared as a witness, and the counsel of the petitioner was afforded an opportunity to cross examine her in the witness box. The relevant portion relating to the testimony of Ms Shaista Hamid, learned Judicial Magistrate, discussed in the judgment of the trial Court is as follows:-

*"Pw-3 Shaista Hamid, Judicial Magistrate who recorded confessional statement of the accused deposed that on 29-05-2004 Mazhar Hussain SIP had filed application before her praying therein for recording of confessional statement of the accused. She therefore took the custody of the accused and removed his handcuffs and sent the police and her staff from her chamber and then introduced to the accused that she is Magistrate and he has been produced before her for the purpose of recording of his confessional statement for which he is not bound and in case, if he make such statement, it should be reduced in writing and may be used against him as evidence. She also appraised to him that in case, he makes the said confessional statement or not, he should not be handed over to the police and shall be remanded to J.C. She also enquired from the accused as to whether he has been threatened or induced or*

*he is sustaining any pressure to make such confessional statement, to which he replied in negative. She also enquired from him as to whether he has been tortured or maltreated by the police to record such confessional statement to which he replied in negative. She therefore inspected the body of the accused through her reader and found no mark of violence on him. She also enquired from the accused as to whether any member of his family has been arrested or detained by the police to compel him to record such confessional statement to which he again replied in negative. She also enquired from him as to why he volunteered to make such confessional statement to which he replied that because of his conscious he is recording such confessional statement. She then allowed three hours time to him to ponder over his making confessional statement from 11.30 a.m. to 2.30 p.m. After the end of reflection period she again reiterated the similar warnings to the accused but he was inclined to record his confessional statement as such she was satisfied that he is recording his statement freely and voluntary as per his own choice as such she recorded his confessional statement in verbatim on his narration in her own handwriting. After completion of the confessional statement she read over its contents to the accused which he admitted to be correct and she obtained his thumb impression and signature on it and she also signed and appended the requisite certificate on the bottom of it.*

*In cross examination she stated that from the conduct of the accused she was satisfied that he without any undue fear, advantage and pressure was inclined to record his confessional statement. The accused was also satisfied and was not confused for recording of his confessional statement.*

*A perusal of testimony of Pw-3 Shaista Hamid, Judicial Magistrate shows that she observed all the legal formalities and requirements which are obligatory for recording of confessional statement of the accused and when she was satisfied that the accused voluntarily and freely is inclined to record his confessional statement then she recorded the confessional statement of the accused on his own narration. No material has been fished out from her in cross examination to reflect on her recording of confessional statement or to render the confessional statement out of consideration. Her evidence is therefore supporting the recording of confessional statement of the accused which is true and voluntary”.*

9. Neither did the learned Judge of the trial court, nor the learned Judicial Magistrate, or for that matter the investigators, have any reason whatsoever to deny a fair trial to the petitioner. The petitioner’s statement, recorded by the trial court under section 342 of the Cr.P.C, in the presence of his counsel, is admitted. The said statement of the petitioner confirms his age as 23 years. It has never been disputed, nor has this aspect of the petitioner's statement, recorded in the presence of his counsel, ever been challenged. The finality of the conviction and sentence is also admitted. It is

also not in dispute that the mercy petition filed by the petitioner was dismissed by the President of Pakistan on 03-07-2012, and the decision has never been challenged. The fact that the execution of the sentence was suspended, and an inquiry undertaken on the direction of the respondent No. 3 is also not denied. From the record placed before this Court, and the arguments made on behalf of the Federation, it is obvious that the latter felt that it would be appropriate to dispel the concerns raised by a section of society relating to the age of the petitioner. It was argued on behalf of the Federation that an inquiry had become essential so as to put such suspicions to rest. The correspondence between Barrister Sarah Bilal, Executive Director of Justice Project Pakistan, holding herself out as representing the petitioner, and various officers of the Federal Government, including the committee constituted by the respondent no. 3, has also been placed on record by the parties. Perusal of the said record reveals that the representative of the petitioner was pressing for the inquiry, and had also forwarded some information and affidavits of family members of the petitioner. The Committee also appears to have been requesting for evidence. A copy of the article published in the daily 'The Independent' by Clive Stafford Smith, Director, Human Rights Charity Reprieve, has also been placed on file. The perusal of the contents show that the scribe was obviously not aware of the actual facts of the case. The contents are factually incorrect, not only in the light of the record placed on record, but are also unequivocally contradicted by the stance of the petitioner taken before this Court.

10. As this Court understands, that notwithstanding the above established facts, the petitioner is seeking relief on the basis of material placed on record on his behalf. It is obvious that resting their case on the documents and information available with the learned counsels for the petitioner, they are seeking a writ for constituting a commission for the determination of his age at the time of the occurrence i.e. in 2004. It has

been strenuously argued that it is to make out a case for the President to exercise his powers under Article 45 of the Constitution. The questions before this court are, firstly, whether a case is made out for the issuance of a writ under Article 199 of the Constitution; secondly, whether this Court has the jurisdiction in respect of the powers of the President under Article 45 of the Constitution and, thirdly, whether according to the facts and circumstances of the case this Court can issue an appropriate writ after the dismissal of the review petition by the Supreme Court.

11. The learned counsel for the petitioner has laid immense stress on a judgment of the Supreme Court of India in the case of 'Shatrughan Chauhan' supra, which relates to the scope of powers of the President under Article 72 of the Constitution of India for granting pardons etc. The analogous powers are vested in the President of Pakistan under Article 45 of the Constitution of Islamic Republic of Pakistan, 1973. There is no cavil to the proposition that the power of pardon, reprieve or commuting a sentence is vested in the President under Article 72 of the Indian Constitution and also under Article 45 of the Constitution of Pakistan. However, in both the jurisdictions the respective Supreme Courts have held that the scope of judicial review in the case of powers vested in the President is of a limited nature. In Shatrughan case, supra, the Indian Supreme Court held as under;

"Nevertheless, this Court has been of the consistent view that the executive orders under Article 72 should be subjected to limited judicial review based on the rational that the power under Article 72 is per se above the judicial review but the manner of exercise of power is certainly subject to judicial review. Accordingly, there is no dispute as to

the settled legal proposition that the power exercised could be the subject matter of limited judicial review"

12. The Supreme Court of India was also mindful of its limitations in subjecting the power of the President to guidelines framed by the Court. Moreover, the facts and circumstances before the Indian Supreme Court were altogether different and, therefore, reliance on the judgment, rather than being of help to the petitioner, renders the prayer as not being within the power and jurisdiction of this Court.

13. Likewise, a Full Bench of the august Supreme Court of Pakistan in *Nazar Hussain versus the State*, PLD 2010 SC 1021, though they did not dilate upon the issue since it was a not a moot point before it, nevertheless referred to the judgments of the Supreme Court of India and observed as follows;

"The question whether being a public power, could it be subjected to judicial review, was considered by the Indian Supreme Court and it held that it was reviewable though on limited grounds. Reference is made to *Epuru Sudhakar v Government of A.P* (AIR 2006 SC 3385) and *State of Bihar v Madan Lal Jain* (AIR 1982 SC 774)"

14. This limited judicial review has been exercised in the cases of *Hakim Khan versus Government of Pakistan and others* PLD 1992 SC 595, *Ziaullah versus Najeebullah* PLD 2003 SC 656.

15. In the light of the above law, the powers of the President under Article 45 of the Constitution are unfettered, and subject to a limited power of judicial review by the Courts. A writ cannot be issued compelling the

President to exercise discretion under Article 45 of the Constitution. This discretion has been exclusively vested in the President by the framers of the Constitution. In the instant case, admittedly, the mercy petition of the petitioner was dismissed, as communicated to the petitioner vide letter dated 11-07-2012, also referred to in his second mercy application, a copy of which is attached with the petition at page 59 as Annex G-1. The dismissal of the mercy petition was obviously accepted as he never challenged, nor has any prayer been sought with regard thereto in the instant petition. The inquiry conducted on the direction of respondent no. 3 was also not in pursuance of the powers vested in the President under Article 45 of the Constitution, and as a consequence the law laid down by the Supreme Court in the case of Ziaullah versus Najeebullah supra is not attracted in the facts and circumstances of the instant case. It is also settled law that what cannot be done directly can also not be done indirectly. Thus the arguments advanced by the learned counsel for the petitioner in the context of Article 45 have no relevance, nor does this Court have any jurisdiction to compel the President to exercise discretion there under. Needless to mention that no prayer has been made in the petition in this regard. Even otherwise, it is settled law that this Court cannot exercise suo moto powers under Article 199 of the Constitution. Reliance is placed on "Dr. Imran Khatak and another vs. Ms. Sofia Waqar Khattak, PSO to Chief Justice and others", **2014 SCMR 122**.

16. It is settled law that the principle enshrined in the maxim "*Interest Reipublicae Ut Sit Finis Litium*", meaning "in the interest of society as a whole, litigation must come to an end" is imbedded in and an integral part of the rule of law. The august Supreme Court in "Abul Hossain Sana vs. Suwalal Agarwala and another", **P L D 1962 Supreme Court 242** has held that the general principle that there has to be an end to litigation is applicable essentially to proceedings of any kind in a Court. This Court is further fortified by the law laid down by the Supreme Court in the case of "Rehmat Ullah alias

Raja vs. Home Secretary Punjab and others”, **2004 SCMR 1861**. The facts of the latter case are similar to those of the instant case. The age of the accused was mentioned in the statement recorded under section 342 Cr. P. C, which was confirmed by the Trial Court and appellate courts as well. The plea of juvenility was raised for the first time after the dismissal of the mercy petition. The Supreme Court held that no room was left for a further probe. The rule known as 'double jeopardy' is also embedded in the doctrine of finality of proceedings. In the instant case, any order passed by this Court granting the relief sought, will tantamount to interference with the dismissal of the review petition by the august Supreme Court. This is neither within the scope of the powers of this Court, nor is it vested with such jurisdiction under Article 199 of the Constitution. It is settled law that once proceedings have attained finality by exhausting all the remedies available, that adjudication is final, whether it takes the form of an acquittal or a conviction.

17. Next, the learned counsel for the petitioner has relied on two judgments of the Supreme Court of the United States. The first is Lloyd Schlup versus Paul K Delo, 513 U.S 298 (1995) and it was argued that even after the proceedings had attained finality, yet the petitioner would be entitled to invoke the jurisdiction of this Court. This argument is misconceived, and I am afraid the judgment has not been properly appreciated. Schulp had claimed 'actual innocence'. The Supreme Court of the United States was considering the 'narrow class' of 'rare' and 'extraordinary' cases which requires a convicted person to show that he or she is 'actually innocent'. Unlike the Schulp case, in the instant case a fair trial is admitted, and no plea has been raised of a 'constitutional error at trial'. The judgment has obviously no relevance with the instant case. The second case is Donald. R. Roper versus Christopher Simmons, 543 U.S 551(2005). In a majority judgment the Supreme Court of the United States over ruled its earlier judgment and held capital punishment as



unconstitutional for crimes committed by persons who are under the age of 18 years. This judgment also has no relevance whatsoever in the present case.

18. Lastly, is there any material placed before this Court which would entitle the petitioner to the relief as claimed? The petitioner has indeed not challenged the trial proceedings, nor has any complaint with regard thereto. The trial and proceedings before the appellate forums being in accordance with his right to a fair trial is admitted. He was represented by counsels of his choice. The trial record shows that besides his confessional statement before a Judicial Magistrate, the prosecution had established its case beyond a reasonable doubt. The evidence was far more than the confessional statement. The well reasoned exhaustive judgment of the trial court is sufficient to place a heavy burden on the petitioner to make out at least an arguable case for consideration of the relief sought. The copies of the articles published in the foreign press contain assertions which have no basis at all, rather they are factually incorrect in the light of the record of the trial proceedings, and the arguments advanced or record produced on behalf of the petitioner. The correspondence between the Executive Director of Justice Project Pakistan, representing the petitioner, and various officials of the Federal Government and its agencies, does not disclose any material which would show that any of the fundamental right of the petitioner has been violated. Nothing has been placed before this Court which would indicate any miscarriage of justice or a need for a probe. Conjectures, surmises, unsubstantiated assertions, assumptions without any cogent or material record, cannot vest jurisdiction in this Court to exercise its powers under Article 199 of the Constitution. In the circumstances the relief sought becomes a pursuit in the nature of seeking a roving inquiry or a desire to embark on a fishing expedition. On the one hand the right to a fair trial, passing through all the filtration process till the dismissal of the review

petition by the Supreme Court, is not denied, while on the other an inquiry into the age of the petitioner is being sought without placing any material that would even remotely show that any fundamental right of the petitioner has been violated so as to require interference by this Court. Such litigation, besides being not maintainable, falls within the realm of being frivolous. It tantamount to abuse of the process of the Court. Most importantly, such petitions and undeserved hype, without first verifying the facts and examining the record, is likely to be seen as being aimed at eroding public confidence in the criminal justice system. In the circumstances if proceedings, which have attained finality, are made subject to reassessments, the role of the judicial system, the effectiveness of criminal justice system will be undermined and eroded inevitably leading to chaos in society. Simultaneously, the victims of crime will also suffer. It is noted that the right to a fair trial is equally extended to and applies in the case of a victim. Such roving inquiry as is being sought by the petitioner cannot be allowed in any criminal justice system.

19. For what has been stated above, the petition is not maintainable and is accordingly dismissed.

20. Before parting with this judgment it would be pertinent to note that our criminal justice system is designed to ensure that there is no risk of injustice or error. However, no system can ever be perfect as humans are fallible. The system is based on the foundation of presumption of innocence of an accused and the stringent principles of evidence and criminal procedure are meant to ensure a fair trial. The right to fair trial, particularly by taking abundant care in case of those who claim to be juveniles is a forte of our criminal judicial system. The record produced in the instant case reveals that at the time of the trial of the petitioner in 2004, almost 1400 accused were treated as juveniles in courts in the city of Karachi alone. During the

proceedings in the instant case it has been noticed that some scribes and activists in their exuberance raised an undeserved alarm without verifying the facts or examining the record. Raising of concerns without exercising care and before verifying the facts in itself may lead to miscarriages of justice. It is expected that utmost care would be exercised lest it may prejudice the interests of the society by undermining public confidence in the system.

**(ATHAR MINALLAH)  
JUDGE**

*Announced in the open court on **11-05-2015***

**JUDGE**

*Approved for reporting.*

***Asif Mughal/\****