

**Judgment Sheet**  
**PESHAWAR HIGH COURT, D.I.KHAN BENCH**  
*(Judicial Department)*

**Cr.MB. No.97-D/2022.**

Zaman Ali  
Vs.  
The State.

**JUDGMENT**

For Petitioner: Sh. Muhammad Adeel & Ms. Sania Noor, Advocates.

For State: Mr. Rehmatullah, Asstt: A.G.

Date of hearing: 18.3.2022.

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MUHAMMAD FAHEEM WALI, J.- Having been charged in case FIR No.34 dated 20.02.2021, under Section 9(d) of the Khyber Pakhtunkhwa Control of Narcotic Substance Act, 2019, of police station Daraban, the petitioner seeks post arrest bail, as he was declined bail by the Court of learned Additional Sessions Judge-VI, D.I.Khan vide order dated 17.02.2022, on ground of juvenility.

2. Brief facts of the case as narrated in the FIR, are that on 20.02.2021, on receiving a spy information regarding smuggling of huge quantity of Charas in a truck from Quetta to Peshawar, complainant Atta Ullah Khan SHO of police station Daraban alongwith other police contingents and Falaksher Incharge Daraban Check Post, laid a special Nakabandi on the spot, meanwhile, a Mazda Truck bearing

registration No.LET-2118 came from Quetta Zhob side, which was stopped. The driver disclosed his name as Nasim Ali son of Ayan Ali, whereas the other person sitting alongside driver's seat introduced himself as Zaman Ali son of Wilayat Khan. One Munir Ahmad, a private mechanic was called, who cut down floor of said truck, which led to the recovery of 412 packets containing Charas wrapped in plastic tap from its secret cavities, which were separately weighed with digital scale, each packet came out to be 1240/1240 gram, total 510880 gram Charas was recovered; that during cursory interrogation, the accused disclosed that the recovered contraband was delivered to them at Chaman Road Quetta by co-accused Attique, resident of Ring Road Peshawar, which was to be delivered to him at Peshawar, upon which both the accused were arrested, while Attique was also arrayed as an accused in the FIR.

3. Arguments heard and record gone through.
4. Before proceeding further it is pertinent to mention here that Juvenile Justice System Ordinance, 2000, was subsequently replaced with the Juvenile Justice System Act, 2018. Section 6(5) of the said Act deals with bail to a juvenile which is reproduced hereunder:-

*"(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".*

5. It appears from the record available on file that the petitioner was arrested on 20.02.2021, complete challan was submitted before learned trial Court on 14.7.2021, charge was framed on 02.8.2021. It was on 04.9.2021, when the learned defence counsel submitted an application for requisitioning the record in order to ascertain exact age of the petitioner, notice whereof, was given to the State. After hearing arguments, the learned trial Court vide order dated 01.10.2021, declared the petitioner as juvenile and pursuant thereto, prosecution was directed to submit separate challan against the accused and case was posted to 06.10.2021. On the said date and subsequent dates i.e. 13.10.2021, 14.10.2021, 20.10.2021 and 28.10.2021, separate challan could not be submitted, however, same was submitted on 29.10.2021 and pursuant thereto, charge was framed on 06.11.2021. From the above, it appears that the delay in conclusion of trial cannot be attributed to the petitioner, rather it occasioned in determination of age of the petitioner. In the case reported as 'Saleem Khan Vs. The



State and others' (PLD 2020 Supreme Court 256), it

was held by the apex Court that:-

*"Determination of age of an accused who appears or claims to be a juvenile is, therefore, initially the statutory responsibility of the Police. In the absence of which, the court of general jurisdiction enjoys the power to determine the age of the accused, and if declared to be a juvenile, transfer the case to the concerned Juvenile Court. In the instant case, the Police had not carried out any such exercise and therefore the court on the application of the petitioner issued the required declaration. The determination of age by the court is also a statutory obligation, hence the time spent in obtaining the said finding or declaration by the court cannot possibly be termed as delay caused in the trial by the accused, so as to deprive him of his right to bail on the ground of statutory delay. Any such determination of age by the court is a statutory requirement and forms part of the trial".*

8.

6. In view of what has been stated above, this petition is allowed and the accused/petitioner is directed to be released on bail subject to furnishing bail bond in the sum of Rs:100,000/- (one lac) with two sureties, each in the like amount, to the satisfaction of learned Illaqa/Duty Judicial Magistrate.

7. Above are the reasons of my short order of even date announced on 18.3.2022, which is reproduced herein below:-

“For reasons to be recorded later, this petition for post arrest bail is allowed and accused/petitioner Zaman Ali son of Wilayat Khan is admitted to bail subject to furnishing bail bonds in the sum of Rs:100,000/- with two sureties, each in the like amount, to the satisfaction of learned Illaqa/Duty Judicial Magistrate”.



JUDGE

(S.B)  
Hon'ble Mr. Justice Muhammad Faheem Wali

(Kifayat/ PS\*)

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