

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

J U D G M E N T

Cr. Revision No. 70-P of 2022.

Date of hearing: 10.04.2023

Petitioner: (Saeedullah)
By Mr. Shan Asghar, Advocate.
Respondent: (Lal Sher) By Mr. Hussain Ali,
Advocate.

(State) By Mr. Muhammad Nisar Khan,
AAG.
Mr. Ashfaq Ahmad Daudzai,
Assistant Attorney General, as
Amicus Curiae.

ISHTIAQ IBRAHIM, J.- Through this

Criminal Revision, the petitioner namely Saeedullah son of Esrar-ud-Din, has challenged the order dated 30.03.2022 passed by the learned Judge Anti-Terrorism Court-II, Peshawar, whereby the application filed by the petitioner for transfer of the trial to the Juvenile Court and deletion of section-7 ATA was dismissed.

2. The petition raises questions about the construction of the Anti-Terrorism Act 1997, Juvenile Justice System Act 2018, the inter-play of their various provisions, the

✓

legal effect of inserting Ordinance NO.V of 2012 in Juvenile Justice System Ordinance (XXII of 2000), and its subsequent expiry with the efflux of time. The ultimate question is whether the Anti-Terrorism Court or the Juvenile Court shall try the accused for the offence of terrorism.

3. On 12.7.2019, Saeedullah, allegedly aged 17 years at the time of the commission of the offence, was convicted by the Anti-Terrorism Court under Sections-324/34,337-A (i) PPC, Section-15 of the KP Arms Act, and Section-7 of the Anti-Terrorism Act 1997. He appealed his conviction to the High Court and put forth different contentions, including the objection on Anti-Terrorism Court jurisdiction on the grounds of juvenility. The High Court vide judgment dated 22.02.2022 rendered in Cr. Appeal No.929-P of 2019 allowed his appeal, remanded his case to the trial court, and directed its transfer to the juvenile court.

4. Resuming trial, the Anti-Terrorism Court framed the charge against the accused on 30.3.2022. It overruled the

objection regarding its jurisdiction. The court summed up its order:

“Admittedly, as per S.R.O.572(I)2012, the Federal Government has already designated the Anti-Terrorism Courts established throughout the country under the Anti-Terrorism Act, 1997, to exercise the powers of Juvenile Court in the area of their respective jurisdiction. The learned counsel for the accused claimed that the above referred notification was issued in the light of Juvenile Justice System Ordinance and after the promulgation of Juvenile Justice System Act 2018, no fresh notification empowering Anti-Terrorism Court to act as Juvenile Courts has been issued, therefore Anti-Terrorism Courts lack jurisdiction to try cases involving Juvenile. This contention of the learned defence counsel is not sustainable on the ground that as per section 24 of the General Clauses Act, 1897, the notification already issued by the Federal Government designating the Anti-Terrorism Court as Juvenile Court is protected.”

5. This Court has had helpful submissions from Mr. Shan Asghar, advocate representing the petitioner, Hussain Ali, advocate from complainant, Muhammad Nisar, Additional Advocate General, and Mr. Ashfaq Ahmed Daudzai, Assistant Attorney General.

6. Before the Juvenile Justice System Act 2018 was promulgated, the High Courts had a widely-held view that the Anti-Terrorism Act took precedence over the Juvenile Justice System Ordinance (XXII of 2000) for the trial of juveniles. The Court’s decisions were primarily seized upon the following considerations:

- I. Section 14 of the Juvenile Justice System Ordinance provides that provisions of the

Ordinance are to be read in addition to and not in derogation of any law for the time being in force.

II. The term "exclusively" found in section 21-G of the Anti-Terrorism Act 1997 was added through Act II of 2005, which came after the promulgation of the Ordinance. It demonstrates the legislative intent for the Anti-Terrorism Act to supersede section 4(3) of the Ordinance.

III. Section 32 of the Anti-Terrorism Act 1997 provides that the provisions of the said Act have an overriding effect over all other laws.

IV. The Government of Pakistan, through the notification dated 30.05.2012, declared all the Anti-Terrorism Courts established throughout the country under the Terrorism Act 1997 to exercise the powers of Juvenile Courts.

7. As an abundant clarity, few decisions need a reference.

8. The Lahore High Court held in **Muhammad Din v Muhammad Jehangir**, PLD 2004 Lahore 779:

"The express provisions of sections 2(d), 21-C(5), 21-C(7)(e), 21-C (7)(f) and 21-F of the Anti-Terrorism Act, 1997 clearly postulate that a child below the age of eighteen years can legitimately be tried by an Anti-Terrorism Court constituted under the Anti-Terrorism Act, 1997. We are fortified in this impression by the provisions of section 32 of the Anti-Terrorism Act, 1997 which unambiguously provide that the provisions of the said Act are to have overriding effect over all other laws. As

against that the provisions of section 14 of the Juvenile Justice System Ordinance, 2000 expressly provide that the provisions of the said Ordinance shall be in addition to and not in derogation of any other law for the time being in force. The Juvenile Justice System Ordinance 2000 was introduced at a time when the Anti-Terrorism Act 1997 was already holding the field containing the above mentioned provisions relating to a trial of child by an Anti-Terrorism Court and we have every reason to believe that the Legislature was quite conscious of the said fact but despite that the Juvenile Justice System Ordinance 2000 was not given by the Legislature an overriding effect over the other laws and thus the provisions contained in the Anti-Terrorism Act 1997 relatable to a child's trial by an Anti-Terrorism Court were not tinkered with or disturbed.",

9. The Balochistan High Court expressed in no different terms in **Muhammad Rasool and another versus the State, PLD 2012 Balochistan 122:**

"Learned counsel for the appellants contended that the trial court had no jurisdiction to try appellant Rohullah, being minor. The contention of the counsel has no legs to stand on, as the provisions of section 21-G of the Act of 1997 furnish a complete answer to the said contention, which postulate that an offence of terrorism can be tried only by an Anti-Terrorism Court, constituted under the Act of 1997 and the age of offender has no relevance to the question of such jurisdiction. Difference between the Act of 1997 and the Juvenile Justice System

Ordinance 2000 was that in the former statute Court acquired jurisdiction, if the offence was triable by them whereas in the later statute Courts acquired jurisdiction if the offenders were juvenile, irrespective of the nature of offence committed by them. Under section 32, the provisions of Anti-Terrorism Act 1997 have the overriding effect over all other laws including the Juvenile Justice System Ordinance 2000 whereas under section 14 of the Ordinance 2000, the provisions of the Ordinance 2000 shall be in addition to and not in derogation of any other law for the time being in force".

10. Adding a little more to the already held opinion, the Sindh High Court in **Qamar Hussain Shah Versus, the State PLD 2006 Karachi 331**, held:

"In the Ordinance 2000 there is no specific provision for overriding the provisions of other laws. Thus the principle of maxim "Generalibus specialia derogant" does not apply to the present case because different intention of the Legislature appears in the Ordinance 2000 in the shape of section 14....

Now it is to be seen as to why a necessity had arisen in enacting section 21-G in A.T Act. As already observed that before Ordinance 2000 the A.T Act had jurisdiction to try offences committed by any accused either major or minor. After promulgation of Ordinance 2000, situation was changed. The Parliament realized that offences of act of terrorism might be tried under the Ordinance 2000, therefore a necessity arose before the Parliament to describe which offence shall be tried by which court.

Therefore section 21-G was enacted in the year 2001 describing the jurisdiction and powers of A.T Court. Not only that in the year 2005 the word exclusive has further been added in the section 21-G to make it more clear that all the offences under the A.T Act are exclusively triable by the Anti-Terrorism Court only...

I have already observed that the Juvenile Court created under Ordinance 2000 is the Court of general jurisdiction for taking cognizance and trial of all offences under any law, whereas the courts created under the CNS Act and A.T Act are the Courts of special jurisdiction to take cognizance and try offences mentioned under the said Acts therefore the provisions of both the Act are special provisions in comparison to such provisions of the Ordinance 2000."

11. This Court in **Mujahid Iqbal Versus the State and another** 2019 PCr LJ 1432, described it so:

"Therefore the insertion of word " exclusively" in the Anti-Terrorism Act, being later in time will have precedence over section 4(3) of the Ordinance 2000, more particularly when the intention of legislature in the Ordinance of 2000 is reflected in section 14 which envisages that the provisions of the Ordinance shall be in addition to and not in derogation of any law for the time being in force."Asad Ullah alias Shakir Ullah v State (2011 PCrLJ 1022), Muhammad Rasool v State (PLD 2012 Balochistan 122).

Even otherwise, the Government of Pakistan through notification dated 30.05.2012 has declared

all the Anti-Terrorism Courts established throughout the country under the Anti-Terrorism Act 1997 to exercise the powers of Juvenile Courts in the area of their respective jurisdiction, under the Juvenile Justice System Ordinance 2000."

12. In the order under challenge before this Court, the Anti-Terrorism Court based its opinion on Ordinance No. V, 2012, and the effect of section 24 General Clauses Act 1897. Article-89 of the Constitution of Pakistan, 1973 says that the Ordinance stands repealed at the expiration of one hundred twenty days from its promulgation. It follows that the Ordinance No. V of 2012, which amended Section-4 of the Juvenile Justice System Ordinance.2000, ceased to be effective after one hundred and twenty days from its promulgation.

13. Does the Ordinance have a shadow effect? It is a long-settled opinion that the Ordinance is temporary legislation that carries with it the potential for its own cessation. In his book **Understanding Statutes, First Edition 1997**, S.M Zafar has discussed the effects of expiry of a temporary statute. In his opinion:

"The general law, with regard to the effect of expiry of a temporary statute, has been laid down in the

famous case Crown v Haveli, in this case it was held that, when a temporary statute expires it ceases altogether to have effect as if it has never been, except as to transactions past and closed. This result follows unless there be provision made in the statute itself for continuing the effect thereof in any respect."

14. When assessing the posthumous effects of the Ordinance, the Courts have consistently maintained that the General Clauses Act 1897 cannot be used to interpret constitutional provisions. The Courts, on several occasions, considered the implications of Article 264 of the Constitution of Pakistan 1973 and the applicability of Section 6 and Section 6-A of the General Clauses Act 1897. Nonetheless, the temporary nature of the Ordinance has meant that it is unlikely to have any influence after it expires.

15. In a relatively earlier authority from this Court, **Arbab Muhammad Hasham Khan versus the Crown** **PLD 1953 Peshawar 72**, it was held:

"Reference has been made to section 6 of the N.W.F.P General Clause Act II of 1932, under which where an Act repeals any enactment or where an Act enforced for a period ceases to operate on the expiry of that period then unless a different

intention appears, the repeal or expiry does not revive anything, not in force or existing at the time at which the repeal or expiry takes effect. This section obviously does not deal with Ordinances which are distinct from Acts. The Acts are permanent legislations placed on the statute Book for all time to come while the Ordinances are temporary enactments which have got force only for a limited period, and it is on account of this fact that section 6 of the N.W.F. P General Clauses Act-II of 1932 is silent with regard to the Ordinances. In our view, therefore, when the N.W.F.P Public Safety (Amendment) Ordinance II of 1952, ceased to operate, section 3 of the N.W.F.P Public Safety Act of 1948 revived."

16. The latest verdict of the Honorable Supreme Court, **Pakistan Medical and Dental Council, through its President Versus Muhammad Fahad Malik and others, Civil Appeals No.3 & 4 of 2018, Civil Petition No.3412 of 2017, and Civil Petition No.45 & 64 to 70 of 2018,** after surveying several judgments, puts it beyond pale of doubt. The relevant paragraph reads as under:

"It is well-recognized that in case of any doubt or conflict between any two provisions of the Constitution, the Court has to construct the same harmoniously. First, it is to be determined whether or not there is any conflict between the provisions of Articles 89 and 264 of the Constitution. The clear mandate of Article 89 ibid is that while the President

is authorized to make amendments in a permanent statute by promulgating an Ordinance, subject to the conditions mentioned therein, that Ordinance has been accorded only a limited period of effectiveness and operation, and cannot operate beyond that period unless given permanency by Parliament by making it an Act of Parliament. On the other hand, Article 264 of the Constitution provides, *inter alia*, that where a law is repealed, by, under, or by virtue of the Constitution, the repeal shall not, except as otherwise provided in the Constitution, revive anything not in force or existing at the time at which the repeal takes effect, or affect the previous operation of the law or anything duly done or suffered under the law. Does the Constitution provide for anything to the contrary or otherwise in this regard? The answer to this is yes – Article 89 of the Constitution, which clearly provides otherwise, i.e. every Ordinance shall stand repealed on the expiration of 120 days from its promulgation or upon the passing of a resolution disapproving it if passed by the National Assembly or either House (as the case may be) before the expiration of that period, however, the National Assembly or either House (as the case may be) may by a resolution extend, only once, the Ordinance for a further period of 120 days. What is the effect of an Ordinance on a permanent statute? To our mind, the effect is of a temporary nature, namely, any amendment/insertion/substitution made by it (the Ordinance) would only be for a limited period of 120 or at the most 240 days, unless provided permanency by Parliament by making it an Act of Parliament. Of course, in that eventuality, it would

become a permanent statute. A combined reading of both the Articles makes it manifest that the intention of the legislature appears to be to limit the Ordinance making power of the President and not to give the President unlimited power to amend/alter/modify/change/rescind a permanent statute, which, of course, falls within the domain of Parliament."

17. Summing it up, the Ordinance No. V of 2012, having outlived its life as a temporary law, can have no legal force of its own to withstand the repealing effects of the Juvenile Justice System Ordinance. Resultantly, the decision on the revision petition would essentially turn upon the nature or equity of two statutes, the Anti-Terrorism Act 1997 and the Juvenile Justice System Act 2018. That, in turn, would help assess the impact of competing sections and their resultant legal impact.


18. The Sindh High Court in *Qamar Hussain Shah's* case (PLD 2006 Karachi 331), made following analysis of the general and special law:

"I have already observed that the Juvenile Court created under Ordinance 2000 is the Court of general jurisdiction for taking cognizance and trial of all offences under any law, whereas the courts created under the CNS Act and A.T Act are the Courts of special jurisdiction to take cognizance and

try offences mentioned under the said Acts, therefore, the provisions of both the Act are special provisions in comparison to such provisions of the Ordinance 2000."

19. The above observations seemingly fall short of describing the true essence of "general" and "special law".

Thus, in **People v. Wilcox**, 237 Ill. 421, 86 N.E. 672, one of the earliest expositions on the subject, the Court held:



"The words 'local' and 'special' are frequently used interchangeably, although it is clear that they do not have the same meaning. The word 'local' signifies belonging to or confined to a particular place. When applied to legislation, it signifies such legislation as relates to only a portion of the territory of a state. Bouvier's Law Dict.; Burrill's Law Dict.; People v. O'Brien, 38 N. Y. 193; People v. Newburgh, etc., Railroad Co., 86 N. Y. 1; Ellis v. Frazier, 38 Or. 462, 63 Pac. 642, 53 L. R. A. 454. The word 'local' is used as a counter term to 'general.' The word 'special' appears to be more appropriately applied to laws that grant some special right, privilege, or immunity or impose some particular burden upon some portion of the people of the state less than all. State v. Corson, 67 NJ law. 178, 50 Atl 780 "

20. Similarly, in **State v. Johnson**, 170 N.C. 685, 86 S.E. 788 (N.C. 1915), it was held as under:

"A law is local when it pertains to a particular place or to a definite region or portion of space or is restricted to one place, as, for instance, a local

custom; and it is special when it is different from others of the same general kind or designed for a particular purpose or is limited in range or confined to a prescribed field of action or operation; and so say the lexicographers"

21. For further clarity see **Gunepally Thammayya and Others. Versus Sri Rajah Tyadapusapati (1930) 59**

MLJ 755:

"In In re Smith's Estate. Clements v. Ward (1887) 35 Ch. 589 an earlier Act 43 Geo. 3, giving power to all persons to settle or devise lands or goods for any church, provided it was three months before death, was held not to be affected by the Married Women's Property Act, 1882, which gave absolute power to married women to dispose of property by will. Here the later Act is a special Act in the sense that it applied to married women and not to all persons, but the first Act is special in the sense that it dealt with property given to church, whereas the Married Women's Property Act dealt with all kinds of settlements and devises."

22. Therefore, the special law encompasses various eventualities: individuals, objectives, and domains of activity. While the Juvenile Justice System Act, 2018 caters to specific persons, the Anti-Terrorism Act, 1997 addresses a particular subject. It would be wrong to characterize either of the laws as general.

23. It leads further to an examination of the clash between the two special laws. As a preliminary, the previous comparison between the Juvenile Justice System Ordinance 2000 and the Anti-Terrorism Act, 1997 is no longer relevant. The legal framework has changed. The Juvenile Justice System Act 2018 has no parallel provision to section 14 of the Ordinance. It includes a non-obstante clause and provides an exclusive jurisdiction of the Juvenile Court to try juveniles' cases. The relevant sections read as follows:

Section-4. Juvenile Court. --(4) The Juvenile Court shall have exclusive jurisdiction to try cases in which a juvenile is accused of the commission of an offence.

Section-23. Act to override other laws. ---The provisions of this Act shall have overriding effect notwithstanding anything contained in any other law for the time being in force.

24. Consequently, it is a conflict of two non-obstante clauses that require focus. In **Syed Mushahid Shah and Others Versus Federal Investment Agency and Others**, 2017 SCMR 1218 Honorable the Supreme Court, held as follows:

"Thus when there are two special laws both of which contain overriding clauses, in the case of conflict between the two laws generally the statute later in time will prevail over the statute prior in time."

25. In the same vein, however, the Honorable Court added:

"However we are of the opinion that this presumption is not automatic: instead, a host of other factors, including the object, purpose, and policy of both the statutes and legislature's intention as expressed by the language employed therein, need to be considered to determine which of the two special laws is to prevail".

26. For the foregoing, salient features of the two laws, the Anti-Terrorism Act 1997 and the Juvenile Justice System Act 2018 may be considered:

Inconsistency	Juvenile Justice System Act 2018	Anti-Terrorism Act 1997
Object	Whereas it is expedient to provide for criminal justice system and social integration of juveniles	Whereas it is expedient to provide for the prevention of terrorism, secretarian violence and for speedy trial of heinous offences and for matters connected therewith and incidental thereto
Punishment	1. The Juvenile Court may, keeping in view the best interest of the child,- (a) pass an order for release of the juvenile offender after the victim or complainant, as the case may be, pardons him: Provided that the Juvenile Court may refuse to release	Whoever commits an act of terrorism under section 6 whereby death of any person is caused shall be punishable on conviction with death or with imprisonment for life and with fine

	<p>the juvenile offender even if the victim or complainant pardons if the Juvenile Court for reasons to be recorded in writing considers that such release is either against the public policy or the interests of the State;</p> <p>(b) pass an order for the community service, fine, compensation to the victim or complainant restitution of property, counseling;</p> <p>(c) direct the juvenile offender to be released on probation for good conduct and place such juvenile offender under care of a guardian or any suitable person or such Juvenile Rehabilitation Centre established or certified for the purposes of this Act for any period not exceeding the period of confinement awarded to such juvenile;</p> <p>(d) direct the probation officer to submit probation report in prescribed manner: Provided that if a juvenile offender fails to comply with the orders or violates the conditions of orders of release on probation, the Juvenile Court may pass any order as it may think fit, including cancellation of probation order; or</p> <p>(e) make an order directing the juvenile offender to be sent to a Juvenile Rehabilitation Centre until he attains the age of eighteen years or till the completion of period of imprisonment, whichever comes earlier.</p> <p>2. No person who was a juvenile offender at the</p>	
--	--	--


	time of commission of an offence shall be awarded punishment of death.	
Arrest and Custody	<p>The arrested juvenile shall be kept in an observation home and the officer-in-charge of the police station shall, as soon as possible,-</p> <p>(a) inform guardian of the juvenile, if he can be found, of such arrest and inform him of the time, date and name of the Juvenile Court before which the juvenile shall be produced; and</p> <p>(b) inform the concerned probation officer to enable him to obtain such information about the juvenile and other material circumstances which may be of assistance to the Juvenile Court for making inquiry.</p>	<p>Where a person is detained for investigation, the investigating Officer, within twenty-four hours of the arrest, excluding the time necessary for the journey from the place of arrest to the Court, shall produce the accused before the Court, and may apply for remand of the accused to police custody, 2[or custody of any other investigating agency joined in the investigation] for which the maximum period allowed maybe not less than 1[fifteen days and not more] than thirty days at one time:</p>
Investigation	<p>The investigation officer designated under subsection (1) shall be assisted by a probation officer or by a social welfare officer notified by the Government to prepare social investigation report to be annexed with the report prepared under section 173 of the Code.</p>	<p>An investigating officer under this Act shall be an officer or Police Officer not below the rank of Inspector or equivalent or, if the Government deems necessary Joint Investigation Team to be constituted by the Government shall be headed by an Investigating Officer of Police not below the rank of Superintendent of Police, (BS-18) and other officers of JIT may include equivalent rank from Intelligence Agencies, Armed Forces and Civil Armed Forces. The JIT shall comprise five members and for the meeting purposes the quorum shall consists of three members</p>
Preventive Detention	<p>No juvenile shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the</p>	<p>The Government or, where the provisions of section4 have been invoked, the armed forces or civil armed forces, as the case may</p>

	Code.	be, subject to the specific or general order of the Government in this regard. for a period not exceeding three months and after recording reasons thereof, issue order for the preventive detention of any person who has been concerned in any offence under this Act relating to the security or defence of Pakistan or any part thereof, or public order relating to target killing, kidnapping for ransom, and extortion/bhatta, or the maintenance of supplies or services, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned, for purpose of inquiry:
--	-------	--

27. Based on the above analysis, conflicting provisions in both laws display irreconcilable discrepancies. Therefore, the latter legislation, the Juvenile Justice System Act 2018, would take precedence in the trial of juveniles accused of committing terrorist offences. It aligns with the legislative intent expressed in section 4, subsection 4, and section 23 of the Juvenile Justice System Act,2018. Furthermore, it is worth noting that the Juvenile Justice System Act 2018 mentions three categories of

✓

offences- minor, major, and heinous- with the last one relevant to terrorism-related act.



28. It is crucial to consider that certain safeguards; both substantive and procedural, available to minors can only be ensured through the Juvenile Court platform. These measures include confidentiality of proceedings, detention in observation homes, support from probation and social welfare officers to the investigating officer, and the social investigation report attached to the report under section 173 of the Cr PC. Additionally, the spectrum of rehabilitative penalties, such as probation, community service orders, detention in juvenile rehabilitation centers, and the prohibition of capital punishment, are only envisioned within the parameters of the Juvenile Justice System Act 2018. The absence of such safeguards can affect their right to a fair trial.

29. The case of **T.V The United Kingdom, Application No.24724/94 dated 16th December 1999**, concerned two children aged ten tried by the Crown Court for abduction and murder. They were convicted and sentenced, and T filed an application with the European

Commission of Human Rights, alleging the state violated its obligations under Articles 1, 3, 6, and 14 of the Convention. The European Commission of Human Rights and the Government of the United Kingdom referred the case to the European Court of Human Rights. T claimed that due to his "youth, immaturity, and emotional state his trial in an adult Crown Court in public was inhumane, degrading, and unfair", and he could not effectively participate in the trial. The Court found that there was a violation of Articles 6 and 1 of the Convention, and held that:

"The Court notes that the applicant's trial took place over three weeks in public in the Crown Court. Special measures were taken in view of the applicant's young age and to promote his understanding of the proceedings: for example, he had the trial procedure explained to him and was taken to see the courtroom in advance, and the hearing times were shortened so as not to tire the defendants excessively. Nonetheless, the formality and ritual of the Crown Court must at times have seemed incomprehensible and intimidating for a child of eleven, and there is evidence that certain of the modifications to the courtroom, in particular the raised dock which was designed to enable the defendants to see what was going on, had the effect of increasing the applicant's sense of discomfort

during the trial, since he felt exposed to the scrutiny of the press and public. The trial generated extremely high levels of press and public interest, both inside and outside the courtroom, to the extent that the judge in his summing-up referred to the problems caused to witnesses by the blaze of publicity and asked the jury to take this into account when assessing their evidence (see paragraph 13 above).....

Here, although the applicant's legal representatives were seated, as the Government put it, "within whispering distance", it is highly unlikely that the applicant would have felt sufficiently uninhibited, in the tense courtroom and under public scrutiny, to have consulted with them during the trial or, indeed, that, given his immaturity and his disturbed emotional state, he would have been capable outside the courtroom of cooperating with his lawyers and giving them information for the purposes of his defence. In conclusion, the Court considers that the applicant was unable to participate effectively in the criminal proceedings against him and was, in consequence, denied a fair hearing in breach of Article 6 & 1."

30. Pakistan has ratified the United Nations Convention on the Rights of the Child. As per Article-40 (2) (b) (iii) & (VII) of the Convention, the trial of a child should be conducted in a juvenile court, ensuring safeguards of their privacy. Article-40 (2) (b) (IV) requires proper procedural measures are in place to ensure the child effectively

participates in the trial. Furthermore, Article-40 (1) emphasizes a rehabilitative approach to passing sentences.

31. Sometimes it is believed that the juvenile justice framework is inadequate or inappropriate to deal with radicalized youth or children committing adult-sized crimes. The fallacy of such thinking is underscored by the recent legal literature. The Law Council of Australia report, **Review of the prosecution and sentencing of Children for Commonwealth terrorist offences**, 27 June 2018, mentions:

“The Law Council is of the view that in light of the detrimental effects of incarceration on the rehabilitative prospects for terrorist offenders, the focus on sentencing young terrorist offenders should, where possible, be on alternatives to imprisonment with intensive rehabilitative programs in order to reduce chances of recidivism upon release from such supervision. Where imprisonment is necessary, targeted rehabilitative programs should be available to offenders while serving their sentence”.

32. The Islamic Legal System has long ago stressed the importance of treating juveniles differently in the justice system. Even while dealing with serious crimes, the

Islamic justice system prefers administrative penalties for children of a certain age. To quote from **Abdul Qadir Oudah's Criminal Law of Islam**, translated by S.Zakir Aijaz, International Islamic Publishers,

"At this stage, the perceptive child is not immediately accountable on criminal grounds and will not be subject to the Hadd laid down for theft and adultery; nor will be amenable to qisas for homicide and infliction of injury. Disciplinary action is also a punishment for crime in itself but it is not criminal punishment. The effect of criminal and disciplinary punishment would be that the child will not be treated as a habitual offender, and will as such be liable to only those penal punishments that aim at warning and admonition."



33. Therefore, for the above, it is held that the juvenile accused of committing terrorism offence shall be tried by the Juvenile Court established and notified under the Juvenile Justice System Act 2018. The criminal revision petition is allowed, and the case of the accused Saeedullah shall forthwith be transferred to the Juvenile Court at Peshawar. Needless to mention that in light of Section-23 of the Anti-Terrorism Act 1997, the Juvenile Court shall proceed with the trial of the case as if it had taken cognizance of the offence. Thus, the trial shall resume

from the stage it is transferred by the Anti-Terrorism Court.

Announced:
Dated. 10.04.2023.

JUDGE

(S.B of)
Hon'ble Mr. Justice Ishtiaq Ibrahim.
(Kausar Ali, C.S)