

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Cr.Misc.BA No.228-P/2018

1. Syed Nauman Bacha
2. Syed Luqman Bacha,
Both sons of Pervez Bach,
r/o Sikandary Mardan.

Petitioners

Versus

The State etc

Respondents

For Petitioner :-	<u>Mr. Shabir Hussain Gigyani, Advocate.</u>
State :-	<u>Ms. Mamrez Gul, Advocate.</u>
For Respondent :-	<u>Mr. Maqsood, Advocate.</u>

Date of hearing: **23.02.2018**

ORDER

ROOH-UL-AMIN KHAN, J:- Petitioners Syed Nauman Bacha and Syed Luqman Bacha, who have been declined bail on merit up to this Court, through this application, seek their release on bail on statutory ground in case FIR No.191 dated 15.05.2014, registered under sections 302/324/34 PPC, in Police Station Par Hoti, District Mardan, in terms of section 10(7) of the Juvenile Justice System Ordinance, 2000 (hereinafter to be referred as the Ordinance).

3. Having heard the arguments of learned counsel for the parties, it appears from the FIR that petitioners along with co-accused Parvez, are charged for committing the murder of deceased Khalid Bacha and an attempt to

commit the murder of complainant. The question of juvenility of the petitioners has already been dealt with by the learned trial Court, wherein the petitioners have been declared as Juveniles, hence, are being tried under the Ordinance.

4. I, would straight away refer to section 10 (7) of the Ordinance, which read as under:-

“**10 (7)** Notwithstanding anything contained in the Code and except where a Juvenile Court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused 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, a child who, for commission of an offence, has been detailed shall be released on bail,--

- (a) If, being accused of an offence **punishable with death** has been detained for such an offence for a continuous period exceeding one year and whose trial for such an offence has not been concluded.
- (b) If, being accused of any offence punishable for **imprisonment for imprisonment** for life has been detained for such an offence for a continuous period exceeding six months and whose trial for such offence has not concluded, or

5. Before determining the entitlement of the petitioners for bail on statutory ground, I, would like to meet the legal point raised by learned counsel for the petitioners that since under section 12 (a) of the Ordinance, a death sentence shall not be awarded to the petitioners

being juveniles, therefore, the statutory period for the purpose of bail would be six months as provided under section 10 (7) (b) of the Ordinance, referred above, which the petitioners have completed more than four times.

6. This Court is in agreement with the learned counsel for the petitioners but only to the extent that as per mandate of section 12 of the Ordinance, a death penalty to a juvenile shall not be awarded, however, disagrees with his contention that the statutory period in such circumstances would be six months. Section 10 (7) of the Ordinance, provides the statutory period as 01 years in case a juvenile is charged with an offence punishable with death and six months if charged with an offence punishable life imprisonment. No doubt, the petitioners being juveniles as per mandate of section 12 of the Ordinance cannot be awarded death penalty, but they being charged for an offence punishable with death, the statutory period provided under section 10 (7) (a) of the Ordinance, shall be taken into consideration which is one year. Had it been so as pointed out and interpreted by learned counsel, the Legislature keeping in mind the mandate of section 12 of the Ordinance, would not have enacted sub-clause (a) of sub-section (7) of Section 10 of the Ordinance.

7. It appears from the record that petitioners are behind the bars since their arrest on 10.12.2015 till date i.e. a period of more than two years. Challan against them has

been submitted on 15.07.2016 i.e. after a period of more than seven months, followed by framing of charge on 10.08.2010. Though, major portion of the prosecution evidence has been recorded so far, but still material evidence i.e. the statements of eyewitnesses and the I.O. are yet to be recorded, which would cause further delay keeping in view the lethargic conduct of the prosecution. On perusal of order sheets of the learned trial Court, I observed that non-appearance of the prosecution witnesses on majority occasions has caused delay in conclusion of trial hence, the petitioners are entitled to the concession of bail on statutory ground of delay of more than one year.

8. Accordingly, this petition is allowed. Accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of rupees three lac with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD concerned.

Announced:
23.02.2018

Siraj Afridi P.S.

JUDGE

SB of Mr. Justice Rooh-ul-Amin Khan.