

**SHARIAT APPELLATE BENCH OF THE HIGH COURT
OF AZAD JAMMU AND KASHMIR**

Cr. Revision Petition No.180/2021.
Date of Institution 02.07.2021.
Date of Decision 30.11.2021.

Muhammad Ali s/o Muhammad Ramzan, Caste
Kashmiri, R/O Roli/Dhamol, Tehsil &
District Kotli.

Petitioner-Accused.

To be reported.
-Sd-
CHIEF JUSTICE

Vs.

1. The State through Muhammad Naeem
Butt s/o Muhammad Zaman, Caste
Kashmiri, R/O Roli/Dhamol, Tehsil &
District Kotli.
2. Assistant Advocate General.

Respondents.

**REVISION PETITION AGAINST IMPUGNED ORDER
OF ADDITIONAL DISTRICT COURT OF CRIMINAL
JURISDICTION, KOTLI, DATED 15.06.2021.**

BEFORE:- Justice Sadaqat Hussain Raja, C.J.

PRESENT:

Mr. Abdul Aziz Ratalvi, Advocate, for
Petitioner-Accused.

Ch. Mahboob Ellahi, Advocate, for
Complainant-Respondent No.1.

A.A.G. for State/Respondent No.2.

ORDER:-

The captioned revision petition
has been directed against the impugned
order of Additional District Court of
Criminal Jurisdiction, Kotli, dated
15.06.2021, whereby post-arrest bail,
sought on statutory ground of age

minority, was declined to petitioner-accused.

2. The precise facts forming background of the instant revision petition are that Muhammad Naeem Butt, complainant-respondent No.1, lodged a report against accused-persons, namely, (1) Muhammad Ali, (2) Muhammad Rizwan, (3) Muhammad Gulfaraz, (4) Sheraz, (5) Muhammad Ramzan, (6) Zubair, (7) Umair Naz and (8) Mumtaz Ahmad at City Police Station Kotli on 06.12.2019, alleging therein that accused-persons Nos. 1 to 7 are close relatives and they are litigant to him due to land dispute. On 06.12.2019, at about 10:00am, accused-persons Nos.1 to 5 having been armed with lethal weapons and having common intention trespassed in the disputed land, which is situated in front of the main gate of his house, and started throwing away construction material with the intention to take possession of the

disputed land. On hearing noise, his brother Muhammad Waseem came out of the gate and forbad them to trespass in the disputed land; however, accused-persons Nos.1 to 5, who were armed with weapons, launched attack upon him. Accused-petitioner, Muhammad Ali, who was armed with Pistol, fired a straight shot near the chin of complainant's brother Muhammad Waseem, who fell down and when he had fallen on the ground, accused-persons Nos. 2,3 & 5 gave him fists and kicks and Muhammad Waseem, victim, succumbed to the injuries at spot. Besides complainant, the occurrence was witnessed by Ehsan Ali, Mst. Shagufta Naeem, Tahira Parveen and other inhabitants of locality. The motive behind the occurrence is stated to be land dispute. As per the aforesaid report, a case, bearing F.I.R No.479/2019, in offences under Sections 302, 147, 148, 149, 337-AF & 109,APC, was

registered against petitioner as well as co-accused-persons at Police Station City Kotli on 06.12.2019. After registration of case, petitioner-accused was arrested by police, who alongwith co-accused Sheraz Gull, moved a post arrest bail application on statutory ground of age minority, before Additional District Criminal Court Kotli, on 19.05.2021, which was declined vide impugned order dated 15.06.2021. The aforesaid impugned order dated 15.06.2021, however, has been challenged only by Muhammad Ali, petitioner-accused, through the instant revision petition, which is subject matter of this order.

3. Mr. Abdul Aziz Ratalvi, the learned Counsel for petitioner-accused submitted that if case of his client falls in prohibitory clauses of section 497, Cr.P.C, even then he is entitled to be released on bail because as per School Certificate and verification (Annexure PD

& PD/1), he was minor at the time of occurrence. He further contended that petitioner is minor and in Section 299(i), APC, the word "minor" has been defined that "minor" means a person who is not an adult and "adult" has been defined in the said Section under clause (a) that "adult" means a person who has attained the age of eighteen years. He also agitated that Section 308, APC provides punishment of Qatl-e-Amd not liable to 'Qisas' where an offender guilty of Qatl-e-Amd is not liable to 'Qisas' under section 306, APC or the 'Qisas' is not enforceable under clause (c) of Section 307, APC, he shall be liable to 'Diyat' with the further provision that where at the time of commission of Qatl-e-Amd the offender being a minor had attained sufficient maturity or being insane, had a lucid interval, so as to be able to realize the consequences of his act, he may also be

punished with imprisonment of either description for terms which may extend to fourteen years as 'Tazir', in addition to 'Diyat'; therefore, in such a situation when accused-petitioner being minor is not liable to 'Qisas' and maximum punishment of 'Diyat' as well as 14 years imprisonment as 'Tazir' is liable to be awarded to him, he, on statutory ground of delay in trial, is entitled to be released on bail under third proviso to Section 497(1), Cr.P.C, according to which, any person shall be released on bail, who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year and whose trial for such offence has not concluded, but the Court below failed to consider the aforesaid important aspect of the matter and wrongly declined bail to petitioner-accused. He finally submitted that petitioner is behind bars

for the last one had half years; therefore, by accepting the instant revision petition he may be released on bail. The learned Counsel in support of his arguments placed reliance upon (i) 2002 MLD (Peshawar) 918, (ii) 2003 P.Cr.L.J (Lahore) 711 and (iii) PLD 2012 Sindh 147.

4. Conversely, Ch. Mahboob Ellahi, the learned Counsel for complainant-respondent No.1, strenuously opposed the submissions made by the learned Counsel for petitioner-accused and submitted that petitioner is nominated in the F.I.R, who has been attributed to a specific role of firing straight shot upon deceased; therefore, he is fully involved in the case. He contended that petitioner-accused was not minor at the time of occurrence and if for the sake of argument it is assumed that he was under the age of 18 years, even then he is not entitled to be released on bail under

third proviso to Section 497(1), Cr.P.C, because at the time of occurrence, he, by physical appearance, had attained puberty and under section 299, APC, definition of 'Adult' has been described that an "Adult means a person who has attained, being a male, the age of eighteen years, or being a female, the age of sixteen years, **or** has attained puberty, whichever is earlier", in this manner, between the words "age of eighteen years" and "puberty" the word "**or**" has been used, which clearly indicates that out of the aforesaid two conditions, the condition whichever comes earlier will be considered to declare a person adult; hence, mere presentation of school certificate is not sufficient to prove an accused adult. He pointed out that co-accused, Sheraz Gull, applied for bail on merits, who was not granted bail and his revision petition was dismissed vide order dated 19.01.2021, but later on, he

alongwith petitioner-accused moved bail application before the Court below on the ground of minor age, which was dismissed vide impugned order; however, the aforesaid co-accused did not challenge the same before this Court, in this manner, accused-party tried to deceive the Court below. The learned Counsel submitted that the Court below recorded good reasons for dismissal of bail application; therefore, the impugned order does not warrant any interference by this Court. He finally defended the impugned order on all counts and placed reliance upon (i) 1993 SCR 108, (ii) 2001 P.Cr.L.J (Shariat Court AJ&K) 895, (iii) 2021 YLR (High Court AJ&K) 753.

5. The learned A.A.G representing the State fully owned and supported arguments of the learned Counsel for complainant.

6. I have heard the learned Advocates for the parties as well as the State Counsel and have given my earnest thought to the arguments addressed at Bar.

7. Admittedly, petitioner-accused seeks bail after arrest on statutory ground of delay in conclusion of trial. The allegation against petitioner-accused, Muhammad Ali, is that he fired a straight shot with pistol near the chin of complainant's brother Muhammad Waseem, who succumbed to the injuries.

8. The main contention of the learned Counsel for petitioner-accused is that under section 299(i), APC, the word "minor" has been defined that "minor" means a person who is not an adult and "adult" has been defined in the said Section under clause (a) that "adult" means a person who has attained the age of eighteen years, and according to

School Certificate and verification (Annexure PD & PD/1), his client was minor at the time of occurrence, and section 308,APC provides punishment of Qatl-e-Amd not liable to 'Qisas' where an offender guilty of Qatl-e-Amd is not liable to 'Qisas' under section 306,APC or the 'Qisas' is not enforceable under clause (c) of section 307,APC, he shall be liable to 'Diyat' with the further provision that where, at the time of committing Qatl-e-Amd, the offender, being a minor, had attained sufficient maturity or being insane, had a lucid interval, so as to be able to realize the consequences of his act, he may also be punished with imprisonment of either description for terms which may extend to fourteen years as 'Tazir', in addition to 'Diyat'; therefore, in such a situation when accused-petitioner being minor is not liable to 'Qisas' and maximum punishment of 'Diyat' as well as 14 years

imprisonment as 'Tazir' is liable to be awarded to him, he, on statutory ground of delay in trial, is entitled to be released on bail under third proviso to Section 497(1), Cr.P.C. A perusal of record particularly School Certificate and verification (Annexure PD & PD/1) reveals that these documents do not bear the name of "Muhammad Ali" rather the same relate to one "Mehran Ali", whereas according to Police record petitioner's name appears in all documents as "Muhammad Ali alias Moon"; however, for the sake of argument, if it is assumed that the aforesaid documents relate to petitioner-accused, even then benefit of the same cannot be given to him because according to the said documents, the date of birth of petitioner is 16.11.2002, and occurrence took place on 06.12.2019, which after calculation becomes 17 years and 20 days; hence, at the time of occurrence the age of petitioner-accused

happens to be 17 years and 20 days and in such age a male commonly attains puberty. It would not be out of place to observe here that the petitioner-accused in the age of 17 years and 20 days, by physical appearance, had attained puberty and under section 299,APC, definition of 'Adult' has been described that an "Adult means a person who has attained, being a male, the age of eighteen years, or being a female, the age of sixteen years, **or** has attained puberty, whichever is earlier", in this manner, between the words "age of eighteen years" and "puberty" the word "**or**" has been used, which clearly indicates that out of the aforesaid two conditions, the condition whichever comes earlier, will be considered to declare a person adult; hence, mere presentation of School Certificate and verification (Annexure PD & PD/1) are not sufficient to prove the petitioner-accused as minor. It is also

relevant to observe here that except the aforesaid documents no other document to prove that petitioner was not an 'Adult' or he had not attained 'puberty' at the time of occurrence, has been produced by the petitioner-accused. Thus, petitioner-accused is not entitled to be released on bail under third proviso to Section 497(1), Cr.P.C and the Court below did not commit any illegality while disallowing his bail application, moved on statutory ground, hence, the impugned order does not call for any interference by this Court.

9. The case law cited by the learned Counsel for petitioner-accused are distinguishable from the facts and circumstances of the instant case; therefore, need not to be discussed in detail.

10. The crux of above discussion is that, finding no force in the instant

revision petition, it is hereby
dismissed.

Muzaffarabad,
30.11.2021. (RAH) .

**-Sd-
CHIEF JUSTICE**