

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

Cr. Revision Petition No.181/2021.

Date of Institution 02.07.2021.

Date of Decision 30.11.2021.

Adeeb Tariq s/o Muhammad Tariq, Caste  
Mughal, R/O Dhanna-Thathee, Tehsil  
Khairatta, District Kotli.

To be reported.  
**-Sd-**  
CHIEF JUSTICE

Petitioner-Accused.

Vs.

1. The State through Aamir Khalil s/o  
Muhammad Khalil, Caste Khokhar, R/O  
Dhanna-Thathee, Tehsil Khairatta,  
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 supra titled 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 brief facts forming background of the instant revision petition are that Aamir Khalil, complainant-respondent No.1, lodged a written report against accused-persons, namely, (1) Adeeb Tariq, (2) Abdul Rehman and (3) Adeel at Police Station Khuiratta on 08.12.2019, alleging therein he (complainant) and his cousin Zeeshan Shabbir had been working together as tailors in Thathee bazaar, and there was resentment between Zeeshan Shabbir and Adeeb Tariq, accused, who had abused Zeeshan Shabbir through a telephonic call and also threatened him. On 08.12.2019, at about 2:45pm, complainant and Zeeshan Shabbir were working at their shop meanwhile, aforesaid accused-persons having criminal common intention entered in the shop. Accused Adeeb Tariq had 30-

bore pistol in his hand. All accused-persons saw Zeeshan Shabbir and Abdul Rehman, accused, started giving him fists, whereas Adeeb Tariq, accused, made a straight fire with 30-bore pistol upon left arm biceps of Zeeshan Shabbir, who was taken to THQ Hospital Khuiratta, however, later on he succumbed to the injuries. The motive behind the occurrence is stated to be resentment between accused and deceased. As per the aforesaid report, a case in offences under Sections 302, 452, 34, APC, 15(2) Arms Act and 31 Telegraphic Act was registered against petitioner as well as co-accused-persons at Police Station Khuiratta on 08.12.2019. After registration of case, petitioner-accused was arrested by police, who moved a post arrest bail application on statutory ground of age minority, before Additional District Criminal Court Kotli, on 21.05.2021, which was declined vide

impugned order dated 15.06.2021; hence, the instant revision petition.

3. Mr. Abdul Aziz Ratalvi, the learned Counsel for petitioner-accused contended that although the 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 he was minor at the time of occurrence, and moreover during recording his statement (Annexure-PD) under section 265-D, Cr.P.C, he has narrated his age 17 years and his version is also supported from the documents namely Birth Certificate (Annexure-PD/1), Form-B (Annexure-PD/2) and School Admission Form (Annexure-PD/3). He further 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 state of affairs 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 misunderstood the purpose of section 299(a), APC, and wrongly refused bail to petitioner-accused. The learned Counsel submitted that when there are two possibilities found in a case for awarding punishment, then the possibility which favours accused is adopted, but the Court below did not consider the statement of accused (Annexure-PD) under section 265-D, Cr.P.C, as well as documents namely Birth Certificate (Annexure-PD/1), Form-B (Annexure-PD/2) and School Admission Form (Annexure-PD/3) and dismissed the bail application on surmises and conjectures. He finally submitted that petitioner is behind bars for the last one and 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, vigorously 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 with 30-bore pistol 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 statement of accused (Annexure-PD) under section 265-D, Cr.P.C, as well as documents namely Birth Certificate (Annexure-PD/1), Form-B (Annexure-PD/2) and School Admission Form (Annexure-PD/3) are not sufficient to prove the petitioner-accused as minor. The learned Counsel contended that the Court below recorded well reasoned order 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, (iv) 1996 SCR 247 and (v) PLD 1986 SH.C (AJ&K) 74.

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 learned State Counsel and have given my dispassionate 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, Adeeb Tariq, is that he fired a straight shot with 30-bore pistol upon

left arm biceps of Zeeshan Shabbir, deceased, who was taken to hospital, however, later on succumbed to the injuries.

8. The major contention of the learned Counsel for petitioner-accused is that his client according to statement of accused-petitioner (Annexure-PD) recorded under section 265-D, Cr.P.C, as well as according to documents, namely, Birth Certificate (Annexure-PD/1), Form-B (Annexure-PD/2) and School Admission Form (Annexure-PD/3), 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 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 state of affairs 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 misunderstood the purpose of section

299(a),APC, and wrongly refused bail to petitioner-accused. A perusal of record reveals that according to the aforesaid documents, the date of birth of petitioner is 04.12.2002, and occurrence took place on 08.12.2019, which after calculation becomes 17 years and 04 days; hence, at the time of occurrence the age of petitioner-accused happens to be 17 years and 04 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 04 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 statement of accused (Annexure-PD) recorded under section 265-D, Cr.P.C, as well as documents namely Birth Certificate (Annexure-PD/1), Form-B (Annexure-PD/2) and School Admission Form (Annexure-PD/3) 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 regarding medical opinion 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. Therefore, 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

declining his bail application, moved on statutory ground, hence, the impugned order dated 15.06.2021 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, the same do not render any help to him.

10. The upshot 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**