

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD.

Cr. Misc: Appln: No.S-281 of 2019.

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**DATE      ORDER WITH SIGNATURE OF JUDGE**

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For hearing of main case  
For hearing of MA-4614/2019

**Date of hearing :**      **07.12.2020**  
**Date of order :**      **07.12.2020**

Mr. Mashooque Ali Bhurgri, Advocate for applicant.  
Mr. Zaheeruddin S. Leghari, Advocate for respondent No.2.  
Mr. Shahid A. Shaikh, D.P.G. for the State.

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**ABDUL MOBEEN LAKHO,J-** Through instant criminal miscellaneous application, applicant has impugned the order dated 29.05.2019, passed by learned Ist. Additional Sessions Judge/MCTC, Badin, whereby application filed by the present applicant for conducting re-examination/Super medical board for Ossification test/determination of age of the accused, was dismissed.

2.            The Crux of the prosecution case is that complainant Ashfaque Ali lodged FIR at P.S Nindo on 16.09.2018 at 1730 hours and alleging therein that his brother Imtiaz Ali was doing joint business of Karyana in Nindo City. Two days ago accused Shahwez Ali Memon made altercation with his brother inside street of the house and said fact was disclosed to complainant by Imtiaz Ali. On 15.09.2018 at 6:00 p.m, he alongwith his brother Muhammad Iqbal and Imtiaz Ali was present at shop and at that time accused Shahwez Ali came at black colour motorcycle, he took out pistol and made straight fire upon Imtiaz, who receiving

firearm injury at shoulder fell down. Complainant with the help of his brother Iqbal and uncle Muhammad Ali tried to apprehend the accused but he succeeded to run away. Injured was unconscious, he was taken to RHC Nindo in rickshaw but he died. After postmortem, the dead body was handed over to him. After burial, the complainant lodged instnt F.I.R. Thereafter, the accused was arrested and from his possession 9MM pistol and motorcycle were recovered.

3. During Investigating, the investigating officer moved application that complainant approached him that the accused is major and he is pretending himself as minor and requested for bone ossification test. The said application was allowed by Civil Judge & Judicial Magistrate, Badin on 28.09.2018; hence, the investigating officer was directed to conduct the bone ossification test. Against such order, accused filed Cr. Misc. Application No.570 of 2018, which was allowed by this Court vide order dated 25.1.2019 that applicant/complainant will move fresh application before trial Court for determination of the age of accused. The complainant moved application for conducting ossification test / determination of the age of the accused, which was decided by the learned IInd Additional Sessions Judge, Badin on 5.4.2019 with direction to the Director General Health, Governemnt of Sindh, Hyderabad, to constitute a Medical Board consisting of Specialist to conduct the bone ossification test of accused and to submit report within 15 days. The medical board was constituted and after examination, the board issued certificate dated 10.4.2019 and opined the age of the accused being 19 years old.

4. Learned Counsel for the applicant contended that impugned order is against the facts and law, which was passed in pre-determination and mechanical manner as well as misreading and nonreading of actual facts of the case papers; that trial Court passed the impugned order without considering facebook ID of accused as the evidence in which the accused himself has written his age more than 21 years and has totally relied upon the birth certificate and educational certificates of accused, which are not independent source of evidence because same information is used to be given by the students themselves or their parents in order to show less age of their children; that trial Court has failed to consider major contradictions in between medical ossification report and educational certificates of accused, but draw the margin of 02 years and considered that medical report shows 02 years older than the real age of accused, which shows that the trial Court do not believe medical science and the applicant is not satisfied with the ossification medical report of accused as he has doubt about it of having conducted in somewhere else place. Lastly, learned Counsel for applicant prayed for setting aside the impugned order.

5. Conversely, learned Counsel for the accused / respondent No.2 contended that application in hand is not maintainable and the same is based upon malafide, as the learned trial Court has rightly declared him as such and to this effect no illegality has been committed by the learned trial Court, therefore, the same is liable to be dismissed. In support of his contentions, he has relied upon the cases of INTIZAR HUSSAIN v. HAMZA AMEER (2017 SCMR 633), GHULAM ABBASS v. THE STATE and anothe (2014 P. Cr.L.J 858) and AMAN ULLAH v. THE STATE & 2 others (2013 P.Cr.L.J. 1440). Learned D.P.G adopted the arguments of

learned counsel for the respondent No.2 and supported the impugned order.

6. I have considered the contentions raised by learned Counsel for the parties and have perused the material available on record.

7. It is an admitted position that the alleged incident took place on 15.09.2018 and during the investigation, the investigating officer collected birth certificate of accused issued by NADRA and the aforesaid certificate as per relevant date and entry was issued on 27.10.2018, which fact shows that the certificate was applied and obtained after the registration of F.I.R, in which the date, month and year of birth was shown as 09.12.2001.

8. During pendency of this application, learned Counsel for respondent No.2 filed copies of Matric Pass Certificate, School Leaving Certificate of Ist. Year, Date of Birth Certificate issued by Board of Intermediate and Secondary Education, Hyderabad, and Birth Certificate issued by NADRA. On perusal of these documents, it appears that the same are sufficient to prove that the Birth Certificate is not forged document and that other documents, which were issued prior to the incident, were showing the year of birth as 2001, therefore, it is proved that at the time of incident the accused was 16 years and 09 months old.

9. Perusal of record, it appears that Medical Board has opined that age of accused is 19 years after conducting his bone ossification test and as per testimonials produced viz. Matric Certificate, School Leaving Certificate of Ist year, Date of Birth Certificate duly issued by the Board of Intermediate & Secondary Education, Hyderabad as well as Birth

Certificate duly issued by NADRA, the age of accused at the time of incident was 16 years and 09 months. Now it is to be seen as to whether which of these aspects in respect of the issue of age is to be relied upon, for which the learned trial Court has already relied upon the case of *INTIZAR HUSSAIN v. HAMZA AMEER & others (2017 SCMR 633)*, in which the honourable Supreme Court of Pakistan has held that *“If two kinds of evidence are available on record in the shape of documentry as well as scientific proof to determine the age of accused, then the Court is required to accept the evidence based upon documents.”* Therefore, it is clear in my mind that the age of accused at the time of occurrence was 16 years and 09 months as is evident from the testimonials produced by the accused.

10. In view of above discussion, I am of the opinion that the impugned order dated 29.05.2019 passed by the learned trial Court is sound and well-reasoned, which does not require any interference by this Court, as the same does not suffer from any illegality or infirmity. Consequently, this Criminal Miscellenous Application was dismissed alongwith pending application by a short order announced in open Court on 07.12.2020 and these are the reasons thereof.

JUDGE

Shahid