

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

Crl. Bail Application No. 213 of 2023

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**DATE**

**ORDER WITH SIGNATURE OF JUDGES**

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For hearing of bail application.

**29-03-2023**

Syed Suleman Badshah, Advocate for applicant.  
Mr. Ghulam Mustafa Abro, Advocate for complainant.  
Ms. Robina Qadir, Addl.P.G.

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**Omar Sial, J:** Mohammad Hasnain has sought post arrest bail in crime number 222 of 2022 registered under sections 302, 324 and 34 34 P.P.C. at the Gadap police station. Earlier, his application seeking bail was dismissed on 29-12-2022 by the learned 1<sup>st</sup> Additional Sessions Judge, Malir, Karachi.

2. A background to the case is that the aforementioned F.I.R. was registered on 26.05.2022 at 00:30 hours on the complaint of Arif Sabir who reported an incident which had occurred on 24.05.2022 at 11:30 p.m. He recorded that he was woken up at 2:00 a.m. on 25.05.2022 by a phone call informing him that he should come to the Agha Khan Hospital as his son Shahmeer had been injured. The complainant reached the Hospital and found out that Shahmeer was unconscious and hooked up to a ventilator. Jazlan, who was Shahmeer's cousin told the complainant that he along with Shahmeer and another friend Zargam had gone to visit a friend and on the way back a young boy performing stunts on a motorcycle narrowly missed hitting their car. When the boys reprimanded the motor cyclist, he called his brothers for help and started chasing the boys' vehicle. Soon thereafter some other boys appeared in another vehicle and started shooting at the boys' vehicles. The shooters were identified as Mohammad Ahsan, Mohammad Irfan, Inshal Hassan Khan and Mohammad Hasnain (the applicant). Jazlan died in the shooting whereas a bullet grazed Shahmeer's head injuring him seriously.

3. I have heard the learned counsel for the applicant and the learned Addl.P.G. as well as the learned counsel for the complainant.
4. It transpires that the Police Surgeon, after an ossification test, has determined the age of the applicant to be 14 or 15 years old.

Section 6 of the Juvenile Justice System Act, 2018 provides as follows:

6. Release of juvenile on bail: (1) *Notwithstanding anything contained in the Code, a juvenile accused of bailable offence shall, if already not released under section 496 of the Code, be released by the Juvenile Court on bail with or without surety unless it appears that there are reasonable grounds for believing that the release of such juvenile may bring him in association with criminals or expose him to any other danger. In this situation the juvenile shall be placed under the custody of a suitable person or Juvenile Rehabilitation Centre under the supervision of probation officer. The juvenile shall not under any circumstances be kept in a police station under police custody or jail in such cases.*

(2) *The Juvenile Court shall, in a case where a juvenile is not released under subsection (1), direct the police for tracing guardian of such juvenile and where guardian of such juvenile is traced out, the Juvenile Court may immediately handover custody of the juvenile to his guardian.*

(3) *Where a juvenile is arrested or detained for commission of a minor or a major offence for the purposes of this Act, he shall be treated as if he was accused of commission of a bailable offence.*

(4) *Where a juvenile of more than sixteen years of age is arrested or detained for a heinous offence, he may not be released on bail if the Juvenile Court is of the opinion that there are reasonable grounds to believe that such juvenile is involved in commission of a heinous offence.*

*(5) Where the Juvenile Court is of the opinion that the delay in the trial of a juvenile has not been occasioned by an act or omission of such juvenile 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, such juvenile shall be released on bail if he has been detained for a continuous period exceeding six months and whose trial has not been completed.*

5. Section 2 of the Act of 2018 defines minor, major and heinous offences as follows:

*(g) "heinous offence" means an offence which is serious, gruesome, brutal, sensational in character or shocking to public morality and which is punishable under the Pakistan Penal Code, 1860 (Act XLV of 1860) or any other law for the time being in force with death or imprisonment for life or imprisonment for more than seven years with or without fine;*

*(m) "major offence" means an offence for which punishment under the Pakistan Penal Code, 1860 (Act XLV of 1860) or any other law for the time being in force is more than three years and up to seven years imprisonment with or without fine;*

*(o) "minor offence" means an offence for which maximum punishment under the Pakistan Penal Code, 1860 (Act XLV of 1860) or any other law for the time being in force is imprisonment up to three years with or without fine;*

6. A holistic reading of the above sections of the Act of 2018 reflects that a juvenile i.e. (a person less than 18 years of age) accused of a major or minor offence, should be granted bail as of right unless it appears that there are reasonable grounds for believing that the release of such juvenile may bring him in association with criminals or expose him to any other danger. If the offence for which a juvenile is charged is a heinous offence, the juvenile may be declined bail if he is 16 years or older. In the present case, the applicant prima facie, according to the Police Surgeon appears to

be 14 or 15 years of age and thus, would be entitled to the concession given in the Act of 2018 to persons falling within the ambit of that Act, 2018 although the legislation appears to be silent on whether a juvenile is entitled to bail when he is accused of a "heinous offence" but is less than 16 years of age. Be that as it may, even though the entire incident that rolled out was a consequence of a phone call allegedly made by the applicant to his brothers, it seems that he himself was not armed. I am inclined to grant bail to the applicant solely due to the reason that it has prima facie been determined that he is 14 or 15 years of age.

7. Above are the reasons for the short order dated 22.03.2023.

JUDGE