

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
PESHAWAR  
(Judicial Department)

**Cr.Misc.BA No.2061-P/2015**

Date of hearing: \_\_\_\_\_

Petitioner (s) : \_\_\_\_\_

Respondent (s) : \_\_\_\_\_

**ORDER**

**ASSADULLAH KHAN CHAMMKANI, J.-**Petitioner

Afridi Khan, seeks bail in case FIR No.530 dated 23.08.2015, registered under sections 302/34 PPC, in Police Station Sarband, wherein he alongwith absconding co-accused Mazhar and Inayat is charged for committing the Qatl-i-amd of Muhammad Saqib deceased son of complainant Farash Khan on 23.08.2015 at 18.45 hours near his house with firearm on a motive of land dispute.

2. Arguments heard and record perused.
3. Admittedly, complainant Farash Khan is not the eyewitness of the incident while PW Mst. Gul Shajara and Mst. Shabana the alleged eyewitnesses have specifically assigned the role of firing at the deceased to absconding

co-accused Inayat, in their statements under section 161 Cr.P.C. Similar position has also been shown in the site plan where the role of firing has been attributed to absconding co-accused Inayat. The question of common intention is a state of mind of an accused, which cannot be determined without recording evidence, when he has not actively participated in the crime, therefore, in the circumstances common intention of the petitioner with the absconding co-accused/ principal accused in the commission of offence is yet to be determined during trial after recording evidence. At the moment, on tentative assessment of the material available on record, participation of the petitioner in the commission of offence requires further probe into his guilt. It is settled law that bail may not be refused merely on the ground that accused is directly charged in the F.I.R for a heinous offence, when otherwise, he is found entitled for concession of bail because mistaken relief of bail, can be repaired by convicting the accused, if proved guilty at the trial, but no

proper reparation can be offered for his unjustified incarceration, albeit, his acquittal in the long run.

4. For the above reasons, this petition is allowed. Accused/petitioner is admitted to bail provided he furnishes bail bonds in the sum of Rs.3,00,000/- with two local, reliable and resourceful sureties each in the like amount to the satisfaction of learned Illaqa Judicial Magistrate/MOD concerned.

**Announced**  
**04.12.2015**

**J U D G E**