

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

**Cr.Misc.BA NO.1706-P/2015**

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

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

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

**ORDER**

**ASSADULLAH KHAN CHAMMKANI, J.-** Being unsuccessful before the two courts below to get the concession of bail, petitioner through this further petition seeks bail in case FIR No.273 dated 19.04.2008, registered under sections 302/34 PPC, in Police Station Agha Mir Jani Shah, Peshawar, wherein he alongwith absconding co-accused Fida Khan, Shahid Khan and co-accused Pervez, committed the murder of Saifullah deceased with firearm on 19.04.2008 at 09.15 hours on Ring road near Peshawar Model School Jabba Sohail, on a motive of previous blood feud.

2. Arguments heard and record perused.
3. As per autopsy report the deceased has sustained single firearm entry wound with corresponding exit for which four persons including the petitioner are charged. General role of firing has been attributed to all the

four accused, therefore, it is yet to be determined during trial, as to whose fire shot proved fatal. Petitioner has not confessed his guilt before the competent court of law nor any incriminating articles to connect him with the commission of offence has been recovered either from his direct or indirect possession or on his pointation. In view of the above, the case of the petitioner requires further probe in to his guilt within the meaning of Sub-section 2 of S.497 Cr.P.C. Co-accused Pervez, whose role is identical to that of the petitioner has already been granted bail by this court vide order dated 20.12.2013 in Cr.Misc.BA No.1494-P/2013, so on the principle of consistency too, he is entitled to concession of bail. Reliance can be placed on case titled, ***“Muhammad Daud and another Vs the State and another” (2008 SCMR 173)***. Since on merits, petitioner has made out a case of bail, therefore, his mere alleged abscondance in light of ratio of judgments of the august Apex Court in cases titled ***“Ibrahim Vs Hayat Gul and others (1985 SCMR 382)***, ***“Muhamamd Sadiq Vs Sadiq and others” (PLD 1985 SC 182)***, ***“Mitho Pitafi Vs The State” 2009 S C M R 299***, would not be sufficient to clog the way of bail. It has been clarified by the Hon’ble Supreme Court in case titled, ***“Qamar alias Mitho Vs the State and others” (PLD 2012 Supreme Court 222)*** that

right of bail cannot be refused to accused merely on account of his alleged abscondance which is factor relevant only to propriety. No doubt, trial has been commenced but as per the dictum of Hon'ble Supreme Court in case titled, **“Abid Ali alias Ali vs the State” (2011 SCMR 161)**, when prima face case of accused appears to be one of further inquiry and is covered under the provisions of section 497 Cr.P.C. then it has become a right of accused that he be released on bail. Practice of refusal in cases where challan has been submitted should not be a bar to refuse a right. In the judgment (supra) it has also been observed by the august Apex Court that bail cannot be withheld as a punishment.

4. For the reasons discussed above, I am inclined to exercise the discretion of bail in favour of the petitioner. Accordingly, 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 Trial Court.

**Announced**  
**08.12.2015**

**JUDGE**