

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

**Cr.Misc.BA No.2152-P/2015**

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

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

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

**ORDER**

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

1. Ikhtiar 2. Kashif and 3. Gul Muhammad, seek bail in case FIR No.274 dated 16.08.2014, registered under sections 302/324/34 PPC, in Police Station Regi wherein they alongwith absconding co-accused Imtiaz are charged for committing the murder of Nishad Khan on 16.08.2014 at 15.30 hours inside the Baithak of complainant Taza Khan, with firearms.

2. Arguments heard and record perused.

3. Admittedly, the role of firing at the deceased has been specifically attributed to absconding to-accused Imtiaz. The only role attributed to present petitioners is that they while aiming their weapons at the complainant

warned him not to move, and later on, when the complainant tried to apprehend absconding co-accused Imtiaz after murder of his son, the petitioners opened fire at the complainant, but it proved ineffective. On tentative assessment of the material the petitioners have not actively participated in the murder of the deceased, therefore, their common intention with the principal absconding co-accused as well as their intention to kill the complainant who was at their mercy is yet to be determined during trial after recording evidence, which makes the case of the petitioners arguable for the purpose of bail. It is settled law that bail may not be refused merely on the ground that accused are directly charged in the F.I.R for a heinous offence, when otherwise, they are found entitled to the 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 their unjustified incarceration, albeit, their acquittal in the long run. As on merits, case of bail has been made out, therefore, mere absconding of the petitioners cannot be a

ground for refusal of bail in light of ratio of judgment of the Apex Court in case titled, **“Mitho Pitafi Vs The State” 2009 S C M R 299.**

4. For the reasons discussed above, this petition is allowed. Accused/petitioners are admitted to bail provided each one of them 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**