

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

**Cr.M (B.A) No.4163-P/2022**

Petitioner (s): - (Abd-us-Samad) by  
Mr. Shabbir Hussain Gigyani, Advocate.

Respondents: - (The State) by  
Muhammad Furqan, Advocate.  
(Hameed Gul) by  
Malik Mushtaq Ahmad, Advocate.

Date of hearing: **26.12.2022**

**ORDER**

**MUHAMMAD NAEEM ANWAR, J.**-Through this petition, the petitioner seeks his post arrest bail in case F.I.R No.1275 dated 19.10.2022 registered under sections 302/324/34 P.P.C. at Police Station *City District Charsadda*. He has been refused bail by the learned Additional Sessions Judge-I, *Charsadda* through order dated 07.12.2022.

2. Complainant, namely Hameed Gul reported the incident to Musa Khan Assistant Sub Inspector at the spot at 11:00 hours on 19.10.2022 to the effect that he alongwith his brothers Wahid Gul (deceased), Istikhar Gul and his son Mudassar Gul were busy in cutting sugarcane crop from the landed property of Mukhtiar Bacha situated at Hisar Koorona. In the meanwhile, Muhammad son of Fateh Muhammad, Riaz *alias* Rais son of Ilyas, Wisal son of Muhammad and Abdul Samad (present petitioner) son of Pervaiz resident of Muhallah Khad Azai Rajar duly armed with fire arm came there. On the direction of Muhammad, Riaz *alias* Rais fired at his brother, as a result, he sustained injuries and died on the

spot whereas, rest of the accused fired at them but they escaped un-hurt luckily. Motive behind the occurrence was disclosed to be a blood feud. 'Murasila' was drafted which culminated into *ibid* FIR registered against accused/petitioner and others at police station City Charsadda.

3. Arguments heard and record perused.

4. Perusal of record reveals that effective role of firing at deceased has been ascribed to co-accused Riaz *alias* Rais while the present accused-petitioner has been attributed only the role of ineffective firing at the complainant and PWs. *Prima facie*, neither any incriminating recovery was affected from personal possession of petitioner or on his pointation nor any crime empty was recovered from the spot therefore, the question of sharing common intention by the accused/petitioner with other co-accused can best be determined by the learned trial Court after recording of evidence however, this factor cannot be considered for refusing bail to petitioner. Rel: "Manzoor Hussain and another Vs. The State" (2011 SCMR 902). At this juncture, the case of accused/petitioner is one of further probe. In this regard, reliance is placed on the case of "Atta Ullah Vs. The State through A.G Khyber Pakhtunkhwa and another" (2020 SCMR 451), wherein the apex Court has held that:

**"No injury to any of the victims has been attributed to the accused. Although accused remained an absconder for seen long years, however, since no reasonable ground was urged to deny bail to him, as since he was**

no more required for investigation, it was appropriate to grant bail to him.”

Reliance is also placed on the cases of “Muhammad Ameen vs. The State and another” (2022 SCMR 1444), “Abu Bakar Siddique alias Muhammad Abu Bakar vs. The State and others” (2021 SCMR 540), “Sharif Khan vs. The State and another” (2021 SCMR 87) and “Jahanzeb and others vs. State through A.G. Khyber Pakhtunkhwa Peshawar and another” (2021 SCMR 63).

5. Furthermore, record also reflects that the accused/petitioner being the student of 5<sup>th</sup> semester computer science in Islamia college has submitted an application for impartial investigation regarding his plea of alibi, on the basis of which, the I.O investigated the matter from the record of concerned department pertaining to the date of occurrence, and submitted his report regarding his innocence, which fact further augments the case of the petitioner to be one of the further probe. Reliance may be placed on the case of “Chaudary Nadeem Sultan vs. The State and another” (2022 SCMR 663). Insofar as the contention of the learned counsel for complainant that the accused/ petitioner remained absconder for almost 10 days is concerned, the conduct of petitioner per se is not a ground for dismissing instant petition when otherwise the petitioner has made out a case for further inquiry. **Rel:** “Chairman NAB through PGA NAB Islamabad Vs. Muhammad Khalid” (2016 S C M R 676). As

such, the present accused/petitioner is entitled to the concession of bail, in the circumstances.

6. For what has been discussed above, this bail petition stands allowed and the petitioner is directed to be released on bail subject to his furnishing bail bond in the sum of Rs.200,000/- (rupees two hundred thousand) with two sureties each in the like amount to the satisfaction of concerned Judicial Magistrate/MOD who shall ensure that the sureties are local, reliable and men of means .

7. Before parting with this order, it is clarified that the above findings of this Court, being tentative in nature, shall have no bearing on merits of the case, at the time of its final decision by trial Court.

**Announced.**  
**26.12.2022.**



**JUDGE**