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ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
Crl. Bail Appn. No 5-128 of 2021

Date	Order with signature of Hon ble Judge
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1. For orders on office objection.
2. For hearing of Bail Application.

Mr. Mohammad Afzal Jagirani, advocate for the applicant, along with applicant.

Mr. Ali Anwar Kandhro, Additional Prosecutor General

Date of Hearing : 20.09.2021.
Date of decision : 27.09.2021.

ORDER

Omar Sial, J.- Asghar Ali Khoso has sought post arrest bail in crime number 49 of 2020 registered under sections 302 and 34, P.P.C. at the Civil Line police station (it appears that section 577, P.P.C. was also added at the challan stage). Earlier, his application seeking bail was dismissed by the learned Sessions Judge, Jacobabad on 5-3-2021.

2. Zareena lodged the aforementioned F.I.R. on 20-6-2020. She narrated that at 8:00 p.m. on 16-6-2020 her son Shahid Ali had left the house at 8:00 p.m. with Sikander Ali and the applicant Asghar Ali and 2 other unidentified persons and told his mother that he was going to Sikander's house. At 10:00 p.m. that night another son of hers, Ghaffar, came and told her that Shahid's dead body had been found.


3. I have heard the learned counsel for the applicant as well as the learned Additional Prosecutor General. The complainant did not effect an appearance despite notice. My observations and findings are as follows.

4. It is an admitted position that the only piece of evidence in this case against the applicant is the "last seen" evidence. The dead body of Shahid was found at 10:00 p.m. on 16-6-2020 but it was not until 4 days later that the F.I.R. was registered. There is no explanation as to why the delay occurred. The witnesses have also recorded their statements with a delay of 4 days without any explanation having been provided. While the reasons for delay and its impact on the prosecution case will have to be decided at trial; at this preliminary stage it does create doubt as to the

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accuracy of the complainant's story as narrated in the F.I.R. The benefit of doubt can also be given to the accused at the bail stage. Further, the inquest report as well as the memo of inspection of the dead body reflects that the police did not find any hurt or injury on the body of the deceased. The medical reports shown to me, one on the record and one with the counsel of the applicant, *prima facie* reflect contradictions. I have refrained from commenting further on this issue lest it prejudices the case of either side. Suffice to say that at this stage it can be said that Dr. Bilal Pathan (who declined to appear despite repeated notice to explain his report) needs to clarify the contradictions at trial. Last seen evidence is a weak form of evidence and requires corroboration from independent sources. The crime scene is unclear at the moment; reasons for death are unclear; how did the complainant know the identity (as no identification parade was held) of the applicant is unclear; whether the evidence is of such a nature to satisfy the conditions stipulated by the Honorable Supreme Court for last seen cases are aspects together with those mentioned above, that require further inquiry before the applicant can be held liable for the death of Shahid.

5. The case of the applicant being one of further inquiry, he is admitted to post arrest bail subject to his furnishing a solvent surety in the sum of Rs.100,000/- and a P.R. Bond in the like amount to the satisfaction of the learned trial Court.


JUDGE 27/12/21