

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Bail Application No. 1325 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES
<u>For hearing of bail application.</u>	
<u>23rd November, 2021</u>	
<p>Mr. Aroon Parsad, Advocate for applicant. Mr. Muhammad Iqbal Awan, Addl.P.G. a/w SIP Muhammad Aslam. Complainant present in person.</p> <p style="text-align: center;">=====</p> <p><u>Omar Sial, J:</u> Muhammad Hussain has sought post arrest bail in crime number 322 of 2021 registered under sections 365, 302 and 34 P.P.C. at the Zaman Town police station. Earlier, his application seeking bail was dismissed on 3-6-2021 by the learned 7th Additional Sessions Judge, Karachi East.</p> <p>2. A background to the case is that the aforementioned F.I.R. was lodged by Muhammad Salman on 31-3-2021 reporting an incident which had occurred on 23-3-2021. He recorded that he is a driver by profession and that on 22-3-2021, his elder brother Muhammad Irfan, went with the applicant in connection with business but did not return. After the registration of the F.I.R. the complainant informed the police that his brother was admitted in the Jinnah hospital. The investigating officer went to record the brother's statement but he was unable to do so. On 2-4-2021 the complainant told the investigating officer that his brother had died the previous day while under treatment.</p> <p>3. I have heard the learned counsel for the applicant as well as the learned Additional Prosecutor General, the investigating officer and the complainant in person. My observations and findings are as follows.</p> <p>4. It is a matter of record that the complainant declined to accord permission that the body of his deceased brother be subjected to a post mortem. He also declined to involve the police in any post death formalities and infact had buried his brother. The applicant was prima facie unknown to the complainant however after the applicant's arrest no identification parade was held to determine whether the applicant was the same man with whom the victim had left. Upon a</p>	

tentative assessment it also appears that the F.I.R. in the case may have been lodged after the death of the victim. There is no reason on record to show as to why did the complainant wait for 8 days to do so. There is no medical record available which has been shown to me which would prove the cause of death, however, the investigating officer confirmed that he was told by the doctors that the body of the deceased had been brought to the hospital as an unidentified body by an ambulance. Apparently, the applicant confessed to his crime before the police and led them to the place where he had thrown the dead body. When the entire case is looked at holistically, these aspects require further inquiry.

5. At the moment the only evidence against the applicant is the complainant's statement that he suspected that he (the applicant) had kidnapped and killed the victim. The complainant's own conduct in creating hurdles for the police to carry out its investigation creates doubt in the prosecution case at this preliminary stage. The applicant cannot be kept in custody on the basis of the evidence that the prosecution possesses to date. The case against him, upon a tentative assessment, is one of further inquiry.

6. Above are the reasons for the short order dated 1-11-2021.

JUDGE