

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

Cr. Bail Application No. 2147 of 2021

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGES</b>
<u>For hearing of bail application.</u>	
<b><u>23<sup>rd</sup> December, 2021</u></b>	
	<p>Mr. Aamir Mansoob Qureshi, Advocate for applicant. Mr. Muhammad Taqi, Advocate for complainant. Mr. Talib Ali Memon, APG a/w PI Atiq-ur-Rehman, I.O.</p> <p style="text-align: center;">=====</p> <p><u>Omar Sial, J:</u> Syed Abid Ali has sought post arrest bail in crime number 767 of 2021 registered under sections 396, 397, 302 and 34 P.P.C. at the Mubina Town police station. Earlier, his application seeking bail was dismissed on 26-10-2021 by the learned 8<sup>th</sup> Additional Sessions Judge, Karachi East.</p> <p>2. A background to the case is that the aforementioned F.I.R. was registered on 20-9-2021 by Umar Daraz Butt who reported an incident that had occurred earlier that day. He recorded that he and his son Umair Butt had gone to the market to make some purchases. While they were buying fruit, four armed persons on two motorcycles came to them and snatched a phone and some money from the complainant. A scuffle ensued between the parties which resulted in shots being fired and a bullet hitting the complainants son, who succumbed to his injury.</p> <p>3. I have heard the learned counsels for the applicant as well as the complainant and the learned Assistant Prosecutor General. Their respective arguments are not being reproduced for the sake of brevity but are reflected in my observations below.</p> <p>4. The learned counsel for the complainant and the learned Assistant Advocate General both admit that the applicant was not one of the four persons who is said to have come to rob the complainant party on two motorcycles. This fact was also confirmed by the investigating officer and the complainant himself. Further, the call data record collected by the investigating officer also appears to support the fact that when the incident is said to have occurred the applicant was not present at that location.</p>

5. Upon a query from the investigating officer to apprise the court as to what was the evidence available against the applicant that prompted him to arrest the applicant, the investigating officer very frankly and categorically conceded that he was entrusted this investigation after the parties were not satisfied with the investigation conducted by the previous investigating officer and that he (the current investigating officer) after examining the case from all angles has concluded that this was a false case which has been filed against the applicant. He further explained that the applicant is one of five partners in a construction company. On 23-9-2021 one of the partners, namely Shamraiz Jokhio had ostensibly recorded a statement under section 161 Cr.P.C. in which he had implicated the present applicant. The record appears to reflect however that on 13-11-2021, Shamraiz Jokhio has sworn an affidavit in which he states that he was shocked to see the section 161 Cr.P.C. statement attributed to him and that what the section 161 Cr.P.C. statement contains was not recorded by him at all. The investigating officer also explained that it was rumored that the deceased had regular telephonic contact with the wife of the applicant and that that may have been the reason for the applicant to kill the deceased. The investigating officer however has not found any clue to the alleged affair. The contact between the deceased and the wife of the applicant has not been denied but it has been justified on the ground that the wife was an active partner in her husband's (the applicant's) business and that contact between the two was on that account. The wife has also denied having any affair with the deceased in her section 161 Cr.P.C. statement.

6. In view of the fact that the applicant was not one of the persons who had come to rob the complainant; that prima facie he was far away from the place of incident; that no evidence has been collected to establish that the applicant shared a common intention with those who had come to kill; that the investigating officer of the case is of the view that this is a false case and that a death during a warped mugging incident has been given the shape of a murder by the applicant due to him being enraged that his wife had an affair with the deceased; that no evidence of the alleged affair has been found during investigation; that the only witness in the case who had implicated the applicant has stated on oath that he had not recorded what is contained in his section 161 Cr.P.C. statement – the case against the applicant requires further inquiry.

Accordingly, the application is allowed and the applicant is admitted to 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