

*ORDER SHEET*  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.**

Cr Rev: Application No.D-32 of 2017

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DATE	ORDER WITH SIGNATURE OF JUDGE
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For Katcha peshi  
For hearing of M.A No.6725/17.

27-09-2017.

Mr. Abdul Razzak Leghari, Advocate for applicant.  
Mr. Shahid Shaikh, learned A.P.G  
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Through instant revision application, applicant has challenged order dated 31.08.2017 passed by learned Sessions / Special Judge Narcotics, Mirpurkhas, whereby application u/s 265-K Cr.P.C of the applicant has been declined. It would be conducive to refer last paragraph of impugned order as under-

*“As per FIR, the present applicant / accused was found carrying with him twenty kilograms of charas through his Car. In that situation, it would be pre-mature to say that; he being innocent has been involved in this case falsely by making foistation of charas upon him. the tracking report of the Car, as per learned SPP is managed one. If for the sake of arguments, it is believed that; it is not enough to disbelieve the case of prosecution ignoring the recovery of huge quantity of the charas from the present applicant / accused. The case is ripe for evidence. The complainant is in attendance. There appears no justification to deprive the prosecution of rights to examine its witnesses. In these circumstances, it would be pre-mature to say that; there would be no probability or possibility of the conviction of the present applicant / accused, even if the prosecution is provided a chance to examine its witnesses”.*

2. Learned counsel for applicant contends that, it is alleged that charas was recovered from in-question car on a specific place, but since tracking was installed in that car therefore, such company has provided details that as to at what time the car was at particular time or *otherwise* hence such report has sanctity which negates recovery from in-question car at *particular* place and *time* which since *cuts* at root of prosecution story hence accused was entitled

for an *early* acquittal. On the other hand, learned A.P.G has seriously opposed upon contention raised by counsel for applicant and contends that impugned order is in accordance with law.

3. Heard & perused the record.

4. Since there is no cavil in proposition of law that provision of section 265-K can only be pressed into service only if there is no probability of accused being convicted of ‘**any offence**’ which *too* without prejudicing to presumption of *truth* attached to investigation material on which the Court has taken the *cognizance*. The term ‘**any offence**’ *legally* is not limited to the one for which accused are sent to face trial.

5. The *plea* of tracking record is not a document of *investigation* material but *undisputedly* came from defence with a claim to establish the plea of *alibi*. We would not hesitate in concluding that one *legally* cannot claim an acquittal merely on *plea* of alibi unless the same is proved as required by law for which the *procedure* is provided by Section 265-F of the *Code* itself. Since accused side is at liberty to lead their evidence in order to substantiate that plea. Further, F.I.R is there, recovery of contra bond narcotics is there as the official witnesses in their statements, recorded during course of *investigation*, claim so. Hence, this is not a case of extraordinary circumstances; thus impugned order is accordance with law, applicant would be competent to call his witness as well that officer who has submitted that tracking report in his defence which request, if made by defence, would be considered by trial Court within guidelines provided in the case of *Shah Zain Bugti v. State* PLD 2013 SC 160. Thereafter trial court shall examine *both* pleas of prosecution and defence, in juxtaposition as required by law, for final determination of *guilt* or *innocence* without being influenced by any observation of this court as well trial court in impugned order.

6. In view of what has been discussed above, we are of the view that learned trial court has rightly declined application while holding it a *pre-mature* stage to *firmly* determine that there is no probability or possibility of the conviction of the accused.

Instant revision application is dismissed accordingly.

JUDGE

JUDGE

Fahad Memon