

**Ordre Sheet**  
**IN THE HIGH COURT OF SINDH,**  
**BENCH AT SUKKUR**  
**Cr. Misc. Appln. S – 537 of 2021**

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<b>Date</b>	<b>Order with Signature of Hon'ble Judge</b>
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**Fresh case**

1. For orders on MA No.4563/2021 (U/A)
2. For orders on office objection at flag 'A'
3. For orders on MA No.4564/2021 (Ex.A)
4. For hearing of bail application

**27.08.2021**

Mr. Behram Khan A. Ujjan Advocate for applicant

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**AMJAD ALI SAHITO, J-** Through instant Criminal Miscellaneous Application, the applicant/accused seeks quashment of the proceedings in Sessions Case No.395/2017 re-The State vs. Ali Muhammad Ujjan and others arising out of FIR Crime No.07 of 2017 of Police Station, Tando Masti Khan, pending trial before the Court of learned IV-Additional Sessions Judge, Khairpur.

It is contended by learned counsel for the applicant/accused that the accused filed an application u/s 265-K Cr.P.C which was dismissed by the trial Court and thereafter passed another order dated 17.06.2021, whereby the case against the accused was kept in abeyance until the complainant produced his witnesses for recording their evidence, and it was ordered that case would be reopened as and when the witnesses appeared and the accused were left free. It is contended that the accused have regularly attended the trial Court, but complainant failed to produce his witnesses, therefore, by keeping the case in abeyance, it would be agony of trial, whereas, the application filed u/s 265-K Cr.P.C for acquittal of the accused has also been dismissed. He lastly prayed that the proceedings, if any pending before the trial Court may be quashed.

I have heard the learned counsel for the applicant/accused and perused the material available on record. It appears from the record that the applicant/accused is nominated in the FIR by the complainant so also the P.Ws have implicated him in the commission of the offence. The trial Court while passing the order dated 28.11.2020 has observed that prima-facie sufficient material is available on record to connect the accused with the commission of the offence. Furthermore, the trial Court while keeping the case in abeyance has passed the order dated 17.06.2021, it would be conducive to reproduce the relevant para-2 of the order as under;-

*“In view of the above position and dictum laid down in the aforesaid case, I am of the considered view that when the complainant is not ready to lead evidence then this case is fit to be kept in abeyance, therefore, case of accused persons named above is hereby kept in abeyance until the complainant is ready to bring his witnesses and lead evidence. The prosecution is at liberty to move application for re-opening of the case after when the complainant is ready to lead evidence. Accused are present on bail and their surety/sureties shall remain intact till further order. Accused are directed to appear before this court whenever they are noticed. Order accordingly.”*

Since the prosecution witnesses are not in attendance and the case has not been proceeded on its merits, whereas, the accused were left free with direction that as and when the witnesses appeared, the case will be reopened and they would be called. At this juncture without recording the evidence of the prosecution witnesses, it cannot be declared that the applicant along with co-accused persons, are innocent and they may be acquitted from the charge. In the circumstances, learned trial Court is directed to take all possible efforts for procuring the attendance of the prosecution witnesses even by issuing coercive process i.e. NBWs against them. SSP, Khairpur is directed to ensure the production of the prosecution witnesses in Crime No.07/2017 of Police Station Tando Masti Khan before the Court of Additional Sessions Judge-IV, Khairpur, in case of failure, the trial Court is at liberty to take action against the SSP in accordance with law. The trial Court is further directed that as and when the SSP, Khairpur produced the witnesses, the trial shall be concluded preferably within a period of 45 days, after receipt of this order.

The instant criminal miscellaneous application along with listed application stands disposed of in the above terms along with listed applications.

Judge