

Doctrine of “ALIBI”
(SALIENT FEATURES)

LECTURE

BY

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- Burden to prove plea of alibi is on the accused which is to be proved in accordance with law. [PLD 2001 Kar 279]

- Statement u/s. 161 in support of plea of alibi would not be relevant and admissible for inferring innocence of accused. [NLR 2001 Cr. (S.C.) 380]

- Plea of alibi is the weakest type of plea and cannot be given any weight unless same is proved from very cogent, convincing and plausible evidence. [2002 YLR 137]

- Setting up a false plea of alibi does not lead to an inference of guilt but at the same time it can be a **confirmatory circumstances** to prove the guilt. [2002 YLR 804].

Plea of Alibi

(Grant of Bail – Section 497 Cr.P.C.)

- Bail can be granted in a case of capital charge on the plea of alibi if peculiar facts and circumstances of that case so justify. [PLD 1998 S.C. 97]

- However, plea of alibi cannot be given preference over record made available which prima facie suggest involvement of the accused in the commission of offence.

- Plea of alibi can only be examined during trial and not at bail stage. Affidavit of relative to support this plea cannot discredit the whole evidence on record. [1998 P.Cr.L.J. 1648] Such plea can be looked into by the trial Court at the trial. [1999 MLD 1443]

- FIR clearly asserting that the accused was present and he had fired fatal shot at deceased. Petitioner seeking bail in High Court on ground of investigating Officer's opinion regarding innocence of accused of his absence from place of occurrence. High Court refusing bail saying that accused plea of alibi would have to be examined at trial stage and cannot be made ground for bail. Supreme Court upheld finding of High Court. [PLD 1974 S.C. 83]

- Plea of alibi taken by accused cannot be evaluated at bail stage.

[2003 MLD 72]

- Petitioner's plea of alibi was verified by the passport and exit entry thereon. Normally Courts are reluctant to consider plea of alibi at bail stage but this consideration was not a principle of universal applicability.

- In appropriate cases where a strong and authentic plea of alibi is raised without loss of time, superior Courts can extend concession of bail to the accused. [PLD 2006 Lah. 689]

- The Hon'ble apex Court have been extending the concession of bail, in Khalid Javid v. State, PLD 1978 S.C. 256, Malik Noor Ahmed v. State PLD 1993 S.C. 500 bail was allowed on the plea of alibi.

- In Iqbal Ahmed v. State 1989 P.Cr.L.J. 2122 bail was allowed to the petitioner who had taken the plea of alibi which was supported by documentary evidence.

- In the case of Ajmal Khan PLD 1998 S.C. 97 the Hon'ble Supreme Court observed that bail could be granted in case of capital charge on the plea of alibi if peculiar facts and circumstances of the case so justify.

Plea of Alibi
(Section 498 Cr.P.C.)

- Plea of alibi cannot be judged or evaluated at bail stage [PLD 1974 S.C. 83] where petitioner has been **ascribed specific role of effecting physical coercion upon deceased** along with his co-accused. [PLD 1997 P.Cr.L.J. (Lah) 1657; 1996 P.Cr.L.J. 272]

- However, it would be paradoxical to suggest that **at the stage of pre-arrest bail plea of alibi cannot be taken into account.** It is imperative for Court of law to consider any plea taken by an accused at bail stage along with material placed by prosecution on record. [PLD 1997 S.C. (AJ&K) 349].

1. Mushtaq Hussain Versus State

2011 SCMR 45

Supreme Court

- When accused admits that he was not present at the place of occurrence by taking the plea of **alibi** then he cannot claim right of private defence, as it is self destructive---Plea of right of private defence can be taken by a person who admits the act charged against him but pleads an excuse---If a person states that he did not do the act at all, it is difficult to see how at the same time the question of right of private defence would arise---Such fact by itself is sufficient to discard the plea of right of private defence.

2. Sami Ullah Versus Mst. Kalsoom Bibi
2011 P Cr. L J 550
Peshawar High Court, NWFP

- Qatl-e-Amd and attempt to commit qatl-e-amd--- Bail, refusal of---Alleged plea of **alibi** of accused was a question to be determined by the Trial Court---Such plea of **alibi** was required to be proved through exhaustive, cogent and reliable evidence; and not merely on the basis of statements of few persons recorded under S.161, Cr.P.C. by the Police---On the basis of available record, accused was reasonably connected with the commission of the offence, which carried a capital punishment and fell under the prohibitory clause of S.497, Cr.P.C.--- Bail was refused.

3. Naimat Ullah

Versus

State

2011 MLD 935

Peshawar High Court, NWFP.

- Qatl-e-Amd and attempt to commit qatl-e-amd---Bail, grant of---Further inquiry---Four accused were male members of the same family, wherein one was stated to be present in the Military Unit on the date of occurrence; and he had been placed in column No.2 of the challan---Accused though were charged for an offence carrying capital punishment falling under the restrictive part of sub-section (I) of S.497, Cr.P.C., but the court had to make a tentative assessment of the prosecution case; and the plea of defence at bail stage for arriving at a conclusion as to whether reasonable grounds existed to hold that accused were reasonably connected with commission of offence---**Plea of alibi raised by one of accused persons was found correct and his name was placed in column No.2 of the challan, which made the case of accused one the case of further inquiry---Accused were allowed bail, in circumstances.**

4. Sarmad Mehmood Ahmad Versus State 2011 YLR 439

Lahore High Court, Lahore

- **Presence of accused with the deceased at the place of occurrence was established--- Accused tried to destroy the evidence of the case by raising false plea of alibi through concocted and tampered entry in the register of the Hotel wherein he claimed to have stayed on the date of occurrence---Conduct of the accused remained dubious; instead of registering the F.I.R., he fled the scene and tried to create false story of **alibi** which suggested his involvement in the case.**

5. Naeem Shamshed Versus State

2011 YLR 833

Karachi High Court, Sindh.

- Truth or otherwise of the plea of **alibi** taken by accused would be considered and decided by the Trial Court after recording the evidence of the parties.

6. Miss. Nayab

Versus

State

2011 YLR 789

Karachi High Court, Sindh

- **Statement of alleged victim made under S.164, Cr.P.C., was not in consonance with the statement of complainant---Record prima facie showed that the victim girl was expelled from the school due to her absence---Even enrolment of one of accused, was also cancelled in the school---No independent eye-witnesses were available as to the attendance of said accused or the victim in school on the day when victim was allegedly forcibly taken by accused---No specific role had been assigned to accused who on the date of occurrence had appeared in ward test at the university---Truth or otherwise of the plea of **alibi** taken by accused persons would be considered and decided by the Trial Court after recording of evidence.**

7. Shahbaz Versus State

2011 P. Cr. L. J 338

Karachi High Court, Sindh.

- S.497---Question of joint firing in the wake of **alibi** in favour of co-accused was of no help to the accused at bail stage as the same would be decided at trial.

8. Shoukat Ilahi Versus Javed Iqbal
2010 SCMR 966
Supreme Court

- None of the grounds valid for grant of bail in a case falling under the prohibitory clause of S.497, Cr.P.C., was available to accused---**Accused had not raised the plea of alibi at the time of moving his bail before arrest application, meaning thereby that he had no such defence at that time---Even otherwise, accused had relied upon the evidence of a large number of witnesses in support of his plea of alibi, which could not be evaluated at present stage and would be assessed at the trial---Impugned order of High Court did not suffer from any illegality or irregularity---Bail was declined to accused and leave to appeal was refused in circumstances.**

9. Roman Ali Versus State

2010 YLR 1531

Peshawar High Court, NWFP

- Trial Court had believed the defence evidence in respect of plea of alibi taken by co-accused, who produced five witnesses in support of his plea---According to said co-accused on the day of occurrence he was arrested by the Police and a case was registered against him---Since said acquitted co-accused was serving in Irrigation Department, Investigating Officer also got verified his departure on the fateful day from the office by procuring the attendance register of co-accused, who was shown absent---Trial Court had believed the defence evidence and statement of accused recorded under S.340(2), Cr.P.C. on the ground that nothing had been brought out in cross-examination to make that evidence unreliable---Trial Court also taken into consideration the opinion of Forensic Science Laboratory---Evidence against acquitted accused was not sufficient for his involvement in the offence---When an accused was acquitted of the charges, he enjoyed double presumption of innocence in his favour and the Appellate Court was required to be careful while considering appeal against acquittal---Appeal against acquittal was dismissed.

10. Sher Zada Versus Roshan Zari
2010 YLR 1464
Peshawar High Court, NWFP

- Plea of **alibi** raised by accused person could not be considered at the bail stage because the investigation of the case was in progress and the authenticity of the same could well be ascertained by the Trial Court.

11. Nawab Khan Versus State

2010 P. Cr. L. J 1463

Peshawar High Court, NWFP

- Submissions of counsel for accused like plea of **alibi** and contradiction in the medical and other evidence, were related to the trial and deeply touched the merits of the case which could not be taken into consideration at bail stage, because it would amount to deep appreciation of evidence which was not permissible under the law.

12. Abdur Rashid Versus State
2010 P. Cr. L J 1452
Peshawar High Court, NWFP

- **Attempt to commit qatl-e-amd---Quashing of F.I.R.---Plea of alibi raised by the petitioner could not be taken into consideration at the present stage and it could be adjudicated upon during trial and so was the opinion of Investigating Officer.**

13. Rehman Ullah Versus State 2010 P.Cr.L.J 1319

Peshawar High Court, NWFP

- Qatl-e-amd---Bail, refusal of---Contentions raised on behalf of accused, were such which could be agitated and scanned at trial stage and not at bail stage, because if same were discussed and decided, **same would amount to deeper appreciation of evidence, which was not permissible---Such discussion would also cause expression of opinion before trial, which was not viewed with appreciation.**
- Plea of **alibi** raised during arguments could be relevant, but that too could be weighed after complete evidence was recorded.

14. Mameez Khan Versus State
2010 P Cr. L J 1137
Peshawar High Court, NWFP

- Investigating Officer in the case had recorded statements of six persons who stated that on relevant date accused was not present at place of occurrence as he on said date had gone to another place in connection with Fateha of father of his relative---Investigating Officer in circumstances had believed the statements, recorded under S.161, Cr.P.C. regarding the plea of **alibi** taken by accused---Investigating Officer could not release an accused on the basis of statements recorded under S.161, Cr.P.C. or under S.164, Cr.P.C., unless such statements were proved to be true by the court of competent jurisdiction---Plea of **alibi** was required to be proved through exhaustive evidence and not merely on the statements of few persons recorded under S.161, Cr.P.C.---Investigating Officer had acted upon the statements recorded under S.161, Cr.P.C. which was yet to be proved at trial stage and it had no evidentiary value.

15. Asmatullah Khan Versus State
2010 P. Cr. L. J 83
Peshawar High Court, NWFP

- Whether surrender of accused to the process of law unlike his absconding co-accused, his plea of **alibi** and absence of any empty from the spot of occurrence, were compatible with his innocence or guilt, were the questions requiring further inquiry---Accused was admitted to bail in circumstances.

16. Said Badshah Versus State
2010 MLD 1553
Lahore High Court, Lahore.

- Accused was nominated in the F.I.R. with a specific role, but according to his plea of **alibi** he was performing his duty on the day of occurrence in an Army operation--- Said plea stood verified by the Investigating Officer and even a discharge report was submitted, which was not agreed to by the Magistrate---Earlier bail petition of accused had been dismissed as having not been pressed with a direction to trial Court to conclude the trial within two months---Trial could not be concluded within the specified period as complainant had filed a private complaint and no proceedings were taken in the State case---Said facts had made the case of accused that of further inquiry within the ambit of S.497(2), Cr.P.C.--- Trial in State case had not so far commenced---Bail was allowed to accused in circumstances.

**17. Muhammad Jabbar Versus Shah Daraz Khan
2009 P. Cr. L. J 370**

Peshawar High Court, NWFP

- **Bail, grant of---Further inquiry---Accused had from the very initial stage taken the plea of alibi which was thoroughly investigated by the Investigating Officer who had found accused innocent and released him under S.169, Cr.P.C.---Such release of accused though subsequently was set aside by the High Court in the quashing petition, but accused was not debarred from moving a fresh application under S.497, Cr.P.C.---Statements of independent witness recorded under S.161, Cr.P.C. and S.164, Cr.P.C. had brought the case of accused within purview of further inquiry---Plea of alibi raised by accused and investigated by the Investigating Agency could not be brushed aside outrightly, while considering the prayer of bail of accused.**

**18. Sh. Muhammad Gulzar Versus State
2009 P. Cr. L J 163**

Lahore High Court, Lahore

- **Accused was nominated in the F.I.R. with specific role, but from the findings of Investigating Officer with regard to plea of alibi taken by accused, it was established beyond any shadow of doubt that accused was very much present at his native city where he had his own business and at the time of occurrence he was not present at the place of occurrence, but was conducting his regular business at said place of his business---Accused was also declared innocent in police findings.**
- **Ad-interim pre-arrest bail already granted to accused, was confirmed, in circumstances.**

19. Rehmatullah Butt Versus State

2009 P Cr. L J 104

Lahore High Court, Lahore

- Accused was declared innocent during investigation and his name was placed in Column No.2 of the challan, as his plea of **alibi** was accepted on the basis of admissible evidence; number of witnesses appearing before the Investigating Officer who were present along with the accused in the mosque to offer prayer at the time of alleged occurrence---Bail was granted to accused.

**20. Daleel Khan Versus Sessions Judge, Kalat Division
2008 MLD 1663
Quetta High Court, Balochistan**

- **Defence version was neither plausible nor believable as both accused in support of their plea of alibi, did not depose on oath in the court---Adverse inference though in ordinary course, could not be drawn against accused for not recording his statement on oath as provided under S.340(2), Cr.P.C., but in view of specific plea of alibi taken by accused, burden had shifted to them to prove such plea, but accused were not ready to support such plea by their own statements---Effect---Prosecution had successfully proved that accused persons had committed murder of both deceased---Deceased were murdered on account of alleged “Siakari” (Zina) and accused found both deceased in objectionable position---Accused, in circumstances were rightly found guilty under S.302(c), P.P.C., instead of S.302(b), P.P.C.**

21. Daleel Khan Versus Sessions Judge, Kalat Division
2008 MLD 1663
Quetta High Court, Balochistan

- S.302(c)---Plea of **alibi** ---Failure of accused to record statement on Oath---Accused persons in support of their plea of **alibi** did not enter into witness box to depose on oath---Though in ordinary course, no adverse inference could be drawn against an accused for not recording his statement on oath as provided under S.340(2), Cr.P.C., but in view of specific plea of **alibi** taken by accused persons in the case, burden was shifted to them to prove such plea, but they were not ready to support such plea by their own statements.

22. Shakil Khan Versus State
2008 YLR 2520

Peshawar-High Court, NWFP

- When the plea of **alibi** was raised at the earlier possible stage of the occurrence and same was duly supported by some materials brought on record, it could be taken into account even at bail stage---In the present case both accused persons had raised the pleas of **alibi** at the earliest possible opportunity which were enquired into by the Investigating officer supported by statements of independent witnesses and documentary evidence and after due verification found both of them to be innocent---All facts when taken together and assessed tentatively, had made the case of accused person as one of further inquiry and took it out of the embargo contained in S.497, Cr.P.C. entitling them to the concession of bail---Accused were admitted to bail, in circumstances.

23. Muhammad Khan versus State
2008 PLD 45
Peshawar-High Court, NWFP

- Plea of **alibi** of accused was not believable because affidavit in that respect was not supported by any other proof---Plea of **alibi** raised by co-accused, was also doubtful as no document was on record to prove that at the specific time of occurrence, he was on duty as claimed by him---Bail application of accused was dismissed, in circumstances

24. Wazir Khan Versus State
2008 PLD 42
Peshawar High Court, NWFP

- Evidence on record had established that at the time of commission of offence accused was 71 years old---Son of accused and certain other residents of Illaqa had produced affidavits to the effect that at time of occurrence, accused was present with them in the mosque offering Zohar prayer; in that they had tried to make out a case for **alibi** which could not be considered at bail stage, especially when accused had not taken said plea of **alibi** before the lower courts or before High Court in the grounds of bail application.

25. Shah Nawaz Versus State
2008 YLR 2449
Lahore High Court, Lahore

- Plea of **alibi** taken by accused that he was admitted in Hospital and remained under treatment, was not acceptable because that was an after-thought as said plea of **alibi** was not taken by accused during investigation---Trial Court had rightly rejected plea of **alibi** of accused.

26. Rehmat Ali Versus State
2008 YLR 1361
Lahore High Court, Lahore

- Accused although had been found innocent during investigation on his plea of **alibi** , yet he did not prove the said plea before the Trial Court---Conviction of accused was maintained in circumstances.

27. Muhammad Zamir Versus State
2008 YLR 714
Lahore High Court, Lahore

- First version of accused was before the police that at the relevant time he was present on the duty and he produced documentary evidence and witnesses in support of his such plea of **alibi**, where after he was found innocent during the course of investigation and was placed in Column No.2 of the challan---Accused, in circumstances, had made out a prima facie case falling under sub-section (2) to S.497, Cr.P.C and was entitled to the concession of bail--- Accused was admitted to bail, in circumstances.

28. Kashif Saddique Versus State
2008 P Cr L J 1039
Lahore High Court, Lahore

- Plea of **alibi** taken by accused that they had gone to Iran and were not present in the country on the day of occurrence, was not raised by them before the Investigating Officer and was raised at the trial after taking legal advice from an expert---Accused had failed to prove the said specific plea by adducing cogent and convincing evidence which they were obliged to do under the law, and they could not blame the prosecution for having failed to prove that fact---Defence evidence produced by accused in support of their plea of **alibi** did not inspire confidence---Photographs produced by accused had no evidentiary value and the hotel bill produced by them was also of no significance as the same could very easily be maneuvered---Accused could not produce the embarkation card which was an authentic source of information regarding passenger's immigration---Report of Forensic Science Laboratory had revealed that the photographs on the passports had been changed---Accused, thus, had failed to prove the plea of **alibi** .

29. Khadim Hussain alias Khawar

Versus

State

2008 MLD 771

Lahore High Court, Lahore

- Plea of **alibi** as advanced by defence witness being oral in nature and unsupported by any other source did not hold any water---Said evidence was useless and no reliance could be placed upon the same.

**30. Muhammad Bachal alias Bachal Chandio
Versus
State
2008 YLR 1733
Karachi High Court, Sindh**

- Plea for bail was the plea of **alibi**---Accused had contended that on the date of incident he was admitted to hospital where he was under treatment---Police recorded the statement of doctor concerned who confirmed that accused was under his treatment on the day of occurrence---Plea of **alibi** coupled with delay in lodging F.I.R and recording the statements of prosecution witnesses, had created reasonable doubt about the involvement of accused---Case of further inquiry into the guilt of accused had been made out.

31. Muhammad Farooq Khan

Versus

Province of Sindh

2008 MLD 805

Karachi High Court, Sindh

- Pre-arrest bail, grant of---Mater was subjudice before Judicial Magistrate---On the day of alleged incident, accused was at place 'K' where he was attending the proceedings of case in the Court of Judicial Magistrate--
-Criminal proceedings at place 'L' in circumstances, had been motivated to harass and humiliate accused---
Question of **alibi**, however, would be considered by the Trial Court---Sections of P.P.C., mentioned in F.I.R., wereailable in nature except S.506-B, P.P.C.---
Accused, in circumstances, had succeeded in making out a prima facie case that .F.I.R had been manipulated with ulterior motives---Accused in circumstances was entitled to the concession of pre-arrest bail.

**32. Muhammad Arshad Versus State
2008 MLD 627**

Karachi High Court, Sindh

- **Police entry made in the Roznamcha of Police Station, was yet to be produced in the evidence and that was subject to proof by examining the witnesses---Accused appeared to have taken the plea of alibi through said Police entry, which plea had to be examined after producing the evidence at the time of trial---Said points could be properly appreciated after assessing and appreciating the evidence led by the parties---Only tentative assessment of evidence was required to be undertaken at bail stage and the deeper appreciation of evidence was the function of the Trial Court, which could be done at the time of trial---Accused being not entitled to the concession of bail, his bail application was dismissed.**

33. Moulvi Taj Muhammad Versus State
2007 P CR L J 1891
Quetta High Court, Balochistan

- Appreciation of evidence---Plea of **alibi**---
Burden of proof---Accused raising plea of **alibi** has to discharge the burden by producing satisfactory, reliable and authenticated evidence that his presence at the place of incident at the relevant time was not possible because of his presence at the relevant time at another place.

34. Moulvi Taj Muhammad Versus State
2007 P CR L J 1891
Quetta High Court, Balochistan

- Appreciation of evidence---**alibi**---Accused after issue of search warrants and proclamation getting certificate of his presence in another District from a Government official who had certified his presence before him on the day of occurrence---Conduct of accused, held, indicative of his knowledge of his involvement in the case and an effort to procure evidence for his **alibi**.

35. Moulvi Taj Muhammad Versus State
2007 PCRLJ 1891
Quetta High Court, Balochistan

Plea of **alibi**---Accused to appear in witness box to prove such plea---No adverse, inference, though can be drawn against an accused person for not appearing in witness box in disproof of allegations and charge, but if he had taken a specific plea and burden to prove such plea was upon him, then he should appear in witness-box in support of this such plea.

36. Mairaj Versus State
2007 YLR 2081
Lahore High Court, Lahore

- Plea of **alibi** raised by accused during course of investigation found favour with Investigating Officer who chose to place accused in column No.2 of the report under S.173, Cr.P.C.---Ipsi dixit of the police, was not binding on the court---Even otherwise while granting bail in murder cases, courts were generally reluctant to entertain plea of **alibi**, unless same was absolutely beyond question. Bail petition was dismissed.

37. Munawar Hussain Versus State

2007 YLR 404

Lahore High Court, Lahore

- Accused, according to police record, had raised plea of **alibi** at the very outset which was confirmed during the course of investigation---Accused was declared innocent and his name was placed in Column-2 of the challan. Accused was admitted to bail, in circumstances.

38. Zafar Iqbal Versus State

2007 P. Cr. L. J 555

Lahore High Court, Lahore

- **Only allegation against accused was that he caused injuries to prosecution witness---None of said injuries attracted prohibitory clause of S.497(1),Cr.P.C.---Accused had been declared to be innocent during investigation and his plea of alibi that he was on duty in a factory in another city where he was employed, had found favour with the investigating agency--
- Report for the discharge had been formulated, but Magistrate refused to agree with said police request.**
- **Accused was resident of “M” District and nothing was on record to show that he had any social intercourse with complainant party, which was resident of District ‘K’---Ever since he arrest, consistent stand of accused was that he was totally unconnected in the matter and had nothing to do with the incident. Accused was admitted to bail, in circumstances.**

**39. Muhammad Arif
Versus**

**Station House Officer, Police Station Sadar, Sheikhupura
2007 YLR 2946**

Lahore High Court, Lahore

- Both the said accused persons had produced their witnesses during the course of investigation in support of their plea of **alibi** which was verified by the two Investigating Officers, whereby they were declared innocent---Discharge report was prepared and said accused were accordingly discharged by the Judicial Magistrate vide impugned order which was a speaking and legal order---Reasoning had been given by the Magistrate qua discharge of the accused persons---Complainant had got remedy to file a private complaint against those accused who had either been declared innocent or discharged.

40. Qamar Mukhtiar Khan Versus State
2007 P Cr L J 149
Karachi High Court, Sindh.

- Pre-arrest bail, pendency of---Deeper appreciation of evidence---Plea of **alibi**---Role of public prosecutor---Accused sought pre-arrest bail on the plea of **alibi**, as he was under treatment of two doctors---During the pendency of bail application accused sought summoning of both the doctors---Trial Court allowed the application with the consent of parties but subsequently the order was recalled as one of the two doctors was a prosecution witness---Validity---Deciding application for bail did not call for elaborate sifting of evidence---For the purpose of tentative assessment of evidence in order to satisfy itself about correctness of documents produced by accused, Trial Court could have summoned and perused relevant record, if it was expedient in the circumstances of the case---Trial Court went ahead and proceeded to examine a doctor, who was said to have treated the accused---Impropriety did not stop there but the doctor who was summoned was offered to be cross-examined by both the parties---

- Such exercise by Trial Court was in excess of tentative assessment of evidence and beyond contemplation of S.497 Cr.P.C.---In entire proceedings, role of prosecutor appeared to have been diminished and was conspicuously invisible---Public Prosecutor under S.493, Cr.P.C. was supposed to appear and plead in all Courts ---Law provided that if any private person instructed a pleader to prosecutor in any Court on his behalf, even then public prosecutor would conduct prosecution and privately engaged pleader would act in Court under his direction---Orders relating to summoning of doctors were passed by Trial Court without seeking meaningful assistance of prosecutor which resulted in passing of two consecutive, uncalled for, improper, perverse and illegal orders, which resulted in unreasonable prolongation of bail application and caused multiplicity of litigation---Orders passed by Trial Court regarding summoning of two doctors was set aside.