

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

C.P. No.D-2274 of 2016.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For katcha peshi.

06.09.2017.

Mr. Jawaid Laghari, Advocate for the petitioner.

Mr. Anwar H. Ansari, State Counsel.

Ms. Razia Ali Zaman Khan, Advocate for respondent No.4.

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Through instant petition, petitioner has challenged order dated 11.04.2016, passed by Civil Judge & Judicial Magistrate-III, Nawabshah, whereby he has been arraigned in murder case. Per counsel for petitioner, at the time of offence he was available with one retired District & Sessions Judge Bashir Ahmed Memon and other friends, who have given their affidavits with that regard and affidavit of retired District & Sessions Judge is required to be given more weight; further, he contends that in 164 Cr.P.C. statement, which is inculpatory confessional statement of lady Afshan Sahar, she has taken whole burden of murder upon her and has exonerated two co-accused persons.

2. It may also be added that an *erroneous* decision on a police report does not necessarily allow by-passing ordinary procedure unless *prima facie* there is nothing requiring appreciation of material which shall always effect upon *whole* case of prosecution. Since petitioner (accused) is nominated in F.I.R. of murder case with specific role that he alongwith co-accused caused lathi injuries; *albeit*, his name was placed in column-II hence believing *plea* of alibi shall cause serious prejudice to prosecution case. Worth to mention here that *ipsi dixit* of police is not binding upon the Courts and on the plea of *alibi*, pre-trial verdict cannot be given in favour of accused. It can safely be added that *plea* of alibi shall not become binding if same is supported by words of an *official* but principles to appreciate the same shall remain same. It is burden upon the person who has taken plea of alibi, which can be proved after

leading evidence. Even otherwise, there is a remedy for the petitioner to seek his *early* acquittal by making proper application u/s 265-K Cr.PC before *trial court* if he so desires. Accordingly, the impugned order is in accordance with law. The petition is dismissed.

JUDGE

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