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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-27022-2023 (O&M)

Date of decision: 28.07.2023

Sunil Kumar Machra and another

....Petitioners

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ripudaman Singh Sidhu, Advocate for petitioners.

Mr. Karan Garg, AAG, Haryana.

ARUN MONGA, J. (ORAL)**CRM-27270-2023**

Application is allowed, as prayed for.

Annexure P-3 is taken on record, subject to all just exceptions.

CRM-28288-2023

This is an application for preponing the date of hearing in the main case, which was slated for hearing on 28.07.2023.

Since the matter is fixed for today, instant application is rendered infructuous. Disposed of accordingly.

Main case

Petition herein is for quashing of order dated 01.06.2022(Annexure P-2), whereby learned trial Court, has cancelled the bail order of the petitioners and bail bonds were forfeited to the State in the proceedings arising out of FIR No.201 dated 21.08.2016, registered under Section 323, 325, 149, 147/34 of IPC, 1860 and Section 25 of Arms Act, 1959 at Police Station Adampur, District Hisar (Sections 149, 147 of IPC have been deleted)and arrest warrants were issued against them.

2. Notice of motion.

3. On advance service of copy of petition, learned State counsel appears and accepts notice on behalf of the respondent-State of Haryana.

4. Learned counsel for the petitioners submits that petitioners were not named in the FIR and they have been falsely implicated due to political vendetta and business rivalry. All the offences mentioned in the FIR are bailable offences except Section 25 of Arms Act. He submits that per version of the FIR, neither any gunshot was fired nor any gunshot injury was caused to anyone. He further submits that there is one case/FIR pending against petitioner No.1 in which he is on bail and he has not been declared a proclaimed offender. There is no case pending against petitioner No.2 and he too has not been declared a proclaimed offender.

4.1. Learned counsel for the petitioners further contends that petitioner No.1 was admitted on bail by learned Court below vide order dated 21.12.2016 (Annexure P-3) and petitioner No.2 was admitted on bail vide order dated 16.09.2016. He submits that petitioners were facing trial regularly and attending the court proceedings since 2016. However, on 01.06.2022, petitioners and their counsel could not appear due to wrong noting of date and straightaway their bail bonds and surety bonds were cancelled and non-bailable warrants were issued. Hence, the instant petition.

5. Learned counsel for petitioners states that absence of petitioners was not deliberate but was due to sheer inadvertence. The default in appearance was due to circumstances beyond control and not at all intentional. He submits that non-appearance was neither willful nor intentional as they were regularly attending the trial from last six years. However, without issuing any prior notice to the petitioners, learned trial Court erroneously cancelled the bail of the petitioners without thus giving an opportunity of being heard and then issued non-bailable warrants. Resultantly, the impugned order is unsustainable in law.

6. On the other hand, learned State counsel submits that learned trial Court rightly cancelled the bail of petitioners since they deliberately chose not to appear on the date fixed and violated the terms of bail bonds. He submits that out of 14 prosecution witnesses, four have been examined.

7. Arguments heard.

8. No doubt, learned trial Court has got discretion to cancel the bail, however, it is well settled that before passing such an order, Court is required to issue notice to the accused so as to afford accused an opportunity to explain as to why the bail should not be cancelled. Such course has not been adopted by learned court below in the instant case. In the peculiar premise, in my opinion, learned Court below has committed patent irregularity by not according an opportunity to accused/petitioners to explain their default by first issuing notice as to why their bail bonds be not cancelled. On this ground alone, impugned order to the extent of cancellation of bail deserves to be set aside.

8.1. Moreover, cancellation of bail is a serious matter and can have significant impact on the life of a person. Matters of personal liberty ought not to be taken so lightly and in such mechanical manner as in the case herein.

9. There being sufficient reasons beyond control of the petitioners which caused their default on solitary date of hearing, I am of the view that impugned order cannot be sustained and same is set aside. Earlier bail order stands revived on bail bond and surety bond already furnished by petitioners before learned trial Court. Petitioners are directed to join proceedings before learned trial Court within three weeks from today and shall continue to appear before learned trial Court without default.

10. However, it is made clear that any observations and/or submissions noted herein above shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant petition alone and learned trial Court shall proceed without being influenced with this order.

11. Petition is accordingly allowed.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

28.07.2023

Vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No