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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-36475 OF 2023 (O & M)
DATE OF DECISION: 28.07.2023**

Itwari and another**....Petitioner****Versus****State of Haryana****...Respondent****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr.Gourav Jain, Advocate,
For the petitioner.

Mr. Karan Garg, AAG, Haryana.

ARUN MONGA, J. (ORAL)

Petitioner has filed instant petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking quashing of impugned order dated 05.06.2023 (Annexure P-29), passed by learned Sessions Judge, Fatehabad, vide which bail bonds and surety bonds of petitioners were cancelled and non-bailable warrants were ordered to be issued in FIR No.198 dated 03.11.2018, registered under Sections 323, 341, 307 read with Section 34 of IPC, at Police Station Jakhal, District Fatehabad (however charge sheet dated 07.02.2019 has been filed under Sections 201, 307, 341, 506 read with Section 34 IPC).

2. Learned counsel for that petitioners submits that petitioner No.2 was granted the concession of bail by learned trial Court vide order date 01.02.2019 (Annexure P-2), whereas petitioner No.2 was granted bail by a co-ordinate bench of this Court vide order dated 10.05.2019 (Annexure P-3) passed in CRM-M-13303-2019 and they had been appearing before learned trial Court ever since. Further argues that petitioners last appeared on 13.04.2023, three prosecution witnesses were present to depose but could not be examined

as Court time was over and case was adjourned to 05.06.2023 for recording of statements of prosecution witnesses. He further contends that due to misunderstanding of date between 05.06.2023 and 07.06.2023, they could not appear before the learned trial Court and their bail bonds were cancelled vide order dated 05.06.2023 (Annexure P-29), impugned herein.

2.2 Learned counsel further urges that it was for the first time that they have failed to appear. They are not involved in any other case. Petitioners are old aged illiterate persons. Their absence was neither intentional nor willful.

3. On advance service of copy of petition, learned State counsel appears and opposes the petition. He submits that learned trial Court rightly cancelled the bail of petitioners, since petitioners deliberately chose not to appear on the date fixed and violated the terms of bail bonds.

4. I have heard learned counsel for the parties and perused the record.

5. It appears that petitioners did not appear due to misunderstanding of date. Petitioners are old aged rustic villagers and their absence before learned Court below seems unintentional on a solitary date, given that they had been appearing regularly on each date of hearing since 2018.

6. Section 446 (1) of the Code of Criminal Procedure provides that where a bond under this Code is for appearance before the Court and it is proved to the satisfaction of the Court that the same has been forfeited, the court shall record the grounds of such proof and may call upon the person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. Sub section (2) of the section *ibid* shows that if sufficient cause is not shown, the Court may impose and proceed to recover appropriate penalty. In the present case, the learned trial Court straight away cancelled the bail of both the petitioners, instead of following the prescribed procedure.

7. In my opinion, cancellation of bail ought not to have been so lightly ordered as it is a serious matter, entails curtailment of personal liberty and can have significant adverse effect on the life of the affected persons.

8. There being sufficient reasons beyond control of the petitioners which caused single default to appear, I am of the view that impugned order cancelling the bail of petitioners cannot be sustained and same is set aside. Non-bailable warrants issued against the petitioners are also quashed. Earlier bail orders stand revived on bail bond and surety bond already furnished by petitioners before learned Court below. Petitioners are directed to join proceedings before learned Court below within three weeks from today and shall continue to appear before learned trial Court without default.

9. Petition is accordingly allowed.

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 disposal of the instant petition alone and learned trial Court shall proceed in accordance with law, without being influenced with this order.

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

JULY 28, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No