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**(2012) 08 P&H CK 0159**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Miscellaneous No. M-24972 of 2012 (O and M)

Radhey Shyam Bundela

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision :** 21-08-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 438  
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471  
Prevention of Corruption Act, 1988 — Section 13(1)D

**Citation :** (2012) 08 P&H CK 0159

**Hon'ble Judges :** Rameshwar Singh Malik, J

**Bench :** Single Bench

**Advocate :** Akashdeep Singh, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

Rameshwar Singh Malik, J.—The petitioner has approached this Court, by way of instant petition u/s 438 Cr.P.C., seeking pre-arrest bail in the case arising out of FIR No. 78 dated 1.3.2012, under Sections 420, 467, 468, 471, 120B IPC and Section 13 (1) D of the Prevention of Corruption Act, added on 26.3.2012 at Police Station Suraj Kund, District Faridabad. Learned counsel for the petitioner vehemently contended that the only allegation against the petitioner is that he did not follow the Government instructions (Annexures P-1 and P-2). He further submits that since nothing is to be recovered from the petitioner, his custodial interrogation will not be required. He also submits that petitioner is ready and willing to join the investigation.

2. Learned counsel for the petitioner concluded by submitting that in view of the facts and circumstances of the present case, the instant petition deserves to be accepted.

3. Having heard the learned counsel for the petitioner and after going through the record of the case, this Court is of the considered opinion that present one is not a fit case for extending the benefit of pre-arrest bail. I say so because of

more than one reasons, being recorded hereinafter.

4. Firstly, there are direct and specific allegations against the petitioner. Secondly, there is no denying the fact that General Power of Attorney ("GPA" for short) holder was a resident of Faridabad whereas GPA was got registered from Madhya Pradesh. It is also not in dispute that GPA, which was the sole basis of registration of the sale deed in question, was found to be a forged one.

5. Thirdly, in view of the peculiar facts of the present case noted above, the tacit connivance of the petitioner with GPA holder cannot be ruled out. In this view of the matter, custodial interrogation of the petitioner would be a compulsive necessity for the investigating agency to carry out the effective investigation.

6. The view taken by this Court also finds support from the judgment of the Hon"ble Supreme Court in State represented by the CBI versus Anil Sharma 1997 (4) RCR 268 and from the judgment of this Court in Parminder Singh Garcha versus State of Punjab 2003 (3) RCR 745.

7. The relevant observations made by the Hon"ble Supreme Court in para 4 and 6 in Anil Sharma's case (supra), which can be gainfully followed, read as under:-

We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favorable order u/s 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.

After bestowing our anxious consideration, including a perusal of the Case-Diary file, we definitely feel that the High Court has mis-directed itself in exercising the discretionary power u/s 438 of the Code by granting a pre-arrest bail order to the respondent. We, therefore, upset the impugned order. The appeal is allowed accordingly.

8. Reverting back to the facts and circumstances of the present case, this Court is of the considered view that the present petition is without any merit and it must fail. No case has been made out for extending the benefit of pre-arrest bail to the petitioner. Allegations against the petitioner are direct and serious.

9. In the totality of facts and circumstances of the present case noted above, coupled with the reasons aforementioned, the instant petition is bereft of any merit. Resultantly, the instant petition is ordered to be dismissed.