



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-32295-2025
DATE OF DECISION: 18.06.2025

KUSODHWAJ JANA ALIAS KUSHAD JANA

...PETITIONER

Versus

UNION TERRITORY, CHANDIGARH

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Satish Kumar, Advocate for the petitioner(s).

Mr. Alkanrit Bhardwaj, Addl. P.P., UT Chandigarh.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 of the BNSS, 2023 seeking the concession of regular bail for the petitioner in FIR No.188 dated 30.10.2024 under Sections 420, 120-B, IPC registered at Police Station Sectorf-17, Chandigarh.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

‘To The Senior Superintendent of Police Chandigarh Police Headquarters Sector 9, Chandigarh Sub: Complaint against 1) Kusodhwaj Jana alias Kushad Haj Jana (M:0283721104) son of Kanail Jana, resident of Village Post Office Paschimbar, Police Station Bhagwanpur-1, District Purba Medinipur, West Bengal 721144, Bharat (India), 2) Tapati Rani Kabiraj Jana (M: 9877386657) wife of Shri Kusodhwaj Jana alias Kushad Haj Jana, resident of Paschimbar, Purba Medinipur, Bhagwanpur-1, West



Bengal, 721144, Bharat (India), 3) Sanjay (M: 10 8360559715) son of Kanail Jana, resident of Paschimbar, Purba Medinipur, Bhagwanpur-1, West Bengal, 721144, Bharat (India), 4) Mohan (M: 8637385511) cousin of Kusodhwaj Jana alias Kushad Haj Jana, 5) Ram Mittal (nephew of accused no. 1 2) (M:9888127697), Second Address of all accused Khewat No. 821, Khatauni No. 874, Khasra No. 162//3/1 (2-11), 167//1 (8-0), 10 (8-0), 169/18/1 (4-10), Kite 4 measuring 23 Kanal 1 Marla having 300/46100 share admeasuring 0 Kanal 3 Marla, Hadbast No.352 situated at Village Karora, Dashmesh Nagar, Shiv Mandir Gali, Naya Gaon, District S.A.S. Nagar, Mohali, Punjab for cheating, fraud and for duping 1666.670 gm of gold of the complainant and request for taking appropriate action against all the accused persons in accordance with law. Workplace Ankita Goldsmith SCO 40 TF Sector 23 C Chandigarh Respected Sir, This is with reference on the subject mentioned above. In this regard the complainant Anuradha Jain wife of Shri Sameer Jain, being the proprietor of M/s Siddhi Enterprises, SCO No. 32, First Floor, Back Side Entry, Sector 23-C, Chandigarh wants to bring the facts before your good self for your kind consideration and immediate necessary action to be taken in this regard and the same are as under: That the complainant is running the business of sale purchase of gold, diamond and other allied materials and is running her business with the name and style of M/s Siddhi Enterprises, SCO No. 32, First Floor, Back Side Entry, Sector 23-C, Chandigarh and the complainant is the sole proprietor of the above said firm. That the accused persons were working with the complainant for the last three years and the accused persons were doing the work of making, polishing and repairing of gold ornaments for the complainant and during the working of the accused persons with the complainant, they have built good and cordial relationship with the complainant. It is submitted here that the complainant is having good image and reputation in the locality and has as vast clientage in the vicinity of Chandigarh. The complainant has never dreamed of and expected such incident in her life which has ruined the entire life of the complainant due



to the act and conduct of the accused. That during the working of the accused persons with the complainant, the accused persons have been directed to clear the quantity of the gold provided by the complainant on monthly basis and the accused persons have been clearing the quantity of the gold on monthly basis. It is relevant to mention here that during the working of the accused persons with the complainant, they have started receiving bulk orders of making of gold ornaments from the complainant and since the accused persons have built cordial relations with the complainant, as such the complainant has started giving the huge quantity of gold to the accused persons in good faith. This is so because the accused persons are also working with many other jewellers and also getting orders from them. That all the business dealings between the complainant and the accused persons was going smooth however, for the last one and a half year, the accused persons have failed to clear/ settle the quantity being given by the complainant on monthly basis and had started making defaults in clearing the quantity of gold provided by the complainant and since February 2023, there has been a constant shortfall of the gold on the part of accused persons, which was given by the complainant at her own and by getting the same from her other associate jewellers as well as customers for preparing/alteration as well as repairing of gold ornaments through the accused persons. It is relevant to mention here that whenever the complainant as well as her husband have told the accused persons to clear the outstanding quantity of the gold, every time the accused persons have started lingering on the matter on one pretext or the other. It is submitted here that till the month of August 2024, there is a shortfall of 1666.670 gm of gold on the part of accused persons which is yet to be cleared by the accused persons to the complainant. The complainant many times requested and told the accused persons to clear the entire pending shortfall and they every time assured the complainant that they will clear the entire shortfall of the gold as soon as possible. The complainant in a regular course of business has been managing her business and has been completing her all order of gold jewellery in one way or the other. That as already stated above that



the accused persons are already under a debt / shortfall of 1666.670 gm of gold and has not been clearing his outstanding liability of the said gold to the complainant and every time the accused persons are making lame excuses, such thing has created a serious doubt in the mind of the complainant. Thereafter, the complainant contacted the accused no. 1 2 and clearly told them to clear their entire outstanding shortfall of gold. At that time, the accused no. 1 has admitted his fault and also admitted the fact that there is a shortfall of 1666.670 gm of gold on their part. As per the approximate calculation, an amount of Rs. 1.25 Cr. is due and outstanding towards the accused persons on account of the shortfall of the gold. The accused persons have also assured the complainant that they will clear their shortfall of gold of 1666.670 gm due towards the complainant as soon as possible and the accused persons have sought time from the complainant. Since huge quantity of the gold of the complainant has already been stuck with the accused persons and moreover, the complainant was left with no other alternative but has to accede to the version / statement of the accused and was hoping that the accused persons will either arrange the gold and ill clear all their outstanding dues towards the complainant. That the things did not go normal just even for two days in the life of the complainant and on 18.08.2024, the complainant got to know from reliable sources that the accused persons have fled away from their house after duping the gold of many jewellers worth crores of rupees. The complainant was deeply shocked after hearing this as the accused persons were under a shortfall of 1666.670 gm of gold of the complainant which is approximately amounting to Rs. 1.25 Cr. Thereafter, the complainant without wasting any further time went to the house of the accused persons at Naya Gaon and on reaching there, the complainant found that the house of the accused persons was lying locked. Thereafter, the complainant inquired from the persons of the locality and came to know that the accused persons left the house and went to some unknown place without giving their whereabouts. That from the above said facts, it is clear that the intentions of the accused persons are mala fide and they in a



preplanned manner by hatching a criminal conspiracy with mala fide intention, deliberately and intentionally in order to cheat and play fraud with the complainant have misappropriated 1666.670 gm of gold and duped the entire 1666.670 gm of gold of the complainant amounting to Rs. 1.25 Crores approximately. The complainant is running from pillar to post to get the whereabouts of the accused persons and to recover her gold from the accused persons but all the efforts made by the complainant are in vain. So through this complaint, the complainant request your good self to look into the matter by conducting a thorough investigation and an immediate action may kindly be taken against the accused persons by registering the FIR against them in accordance with law and justice be done to the complainant and oblige. It is further prayed that the gold of the complainant weighing 1666.670 gm may kindly be recovered from the accused persons and oblige. Thanking You.

Sd. Anuradha Jain, ANURADHA JAIN Proprietor of M/s Siddhi Enterprises SCO No. 32, First Floor, Back Side Entry Sector 23-C, Chandigarh M: 8427024477. Today ICMS/2024/024531 Dated 22.08.2024, made by Mr Anuradha Jain M/sSiddhi Enterprises SCO No.32 FF Sector 23 UT Chandigarh Cheating amount Rs.1.25 Crores Apporx, ICMS/2024/024622 Dated 23.08.24, made by Rupak Kumar Mallick R/o Riva Jewellers SCO No.34 Sec 23 CUT Chandigarh Cheating amount Rs 11,82,150/- ICMS/2024/024534 Dated 22.08.2024 and ICMS/2024/024533. IS Dated 22.308.24 made by Chiranjit Dhara R/o 570 DAddu mAjra Colony Sector 38 west Chanidgarh Cheating Amount 7,80,000/- total amount of Rs 1,56,00,000/- Approx agsinst Kusodhaj Jana, Tapati Rani, Sanjay Others after inquiry and approval from senor officers for action received in police station. On complaint ICMS/2024/024531, dated 22.08.2024 made by Anuradha Jain M/s Sidhi Enterprises SCO No 32 FF Sector 23-C UT Chandigarh after inquiry and aprooval from senior officials under section 420,120-B IPC against Kusodhaj Jana, Tapati Rani, Sanjay Others order to be register, on which case FIR No 188Dated 30.10.2024 U/s 420, 120-B IPC PS 17, Chandigarh against Kusodhaj Jana, Tapati Rani, Sanjay Others registered in the police station original



complaint along with copy of the FIR for investigation is handed over to ASI. I ASI along with C. Parveen Kumar 4796/CP for investigation departing to the area of police station Copy of the FIR is sent to Senior Officials. (Note:- Parties can Avail Free legal Aid from District Legal).'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He submits that the petitioner is manufacturing Gold and diamond jewelery for the complainant and other jewelers and when the petitioner demanded his making charges from the complainant, then he instead of making payment to the petitioner had lodged false complaint against the present petitioner. He has further argued that the antecedents of the petitioner are clean. Moreso, the investigation in this case is complete as challan stands presented therefore, prays for grant of regular bail to the petitioner.

On behalf of UT Chandigarh

On the other hand, learned Counsel for UT Chandigarh appearing on advance notice, accepts notice on behalf of respondent and has filed the custody certificate of the petitioner, which is taken on record.

Learned Counsel for UT Chandigarh on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner has not returned the gold after making gold ornaments and thus, has cheated the complainant. He also points out that the petitioner is a habitual offender as he is involved in one more FIR i.e. FIR No. 189 dated 30.10.2024, under Sections 318(2), 61(2) of BNS registered at P.S. Sector 17, Chandigarh.



4. Analysis

From the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 04 months and 22 days, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, no concrete material has been produced by counsel for UT Chandigarh to oppose the bail; and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented however, the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve no purpose.

Reliance can be placed upon the judgment of the Apex Court rendered in “***Dataram versus State of Uttar Pradesh and another***”, **2018(2) R.C.R. (Criminal) 131**, wherein it has been held that the grant of bail is a general rule and putting persons in jail or in prison or in correction home is an exception. Relevant paras of the said judgment is reproduced as under:-

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being



incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an



accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons, 2017(4) RCR (Criminal) 416: 2017(5) Recent Apex Judgments (R.A.J.) 408 : (2017) 10 SCC 658

6. *The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nimesh Tara chand Shah v. Union of India, 2017 (13) SCALE 609 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in which it is observed that it was held way back in Nagendra v. King-Emperor, AIR 1924 Calcutta 476 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson, AIR 1931 Allahabad 356 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.*

7. *However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.”*

Therefore, to elucidate further, this Court is conscious of the basic and fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in “**Balwinder Singh versus State of Punjab and Another**”, SLP (Crl.) **No.8523/2024**. Relevant paras of the said judgment reads as under:-



“7. An accused has a right to a fair trial and while a hurried

trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution.

8. It is not for nothing the Author Oscar Wilde in “The Ballad of Reading Gaol”, wrote the following poignant lines while being incarcerated:

*“I know not whether Laws be right,
Or whether Laws be wrong;
All that we know who be in jail
Is that the wall is strong;
And that each day is like a year,
A year whose days are long.”*

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as **“Baljinder Singh alias Rock vs. State of Punjab”** decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of the concession of bail.



5. Relief

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

18.06.2025
anuradha

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>