

(2025) 06 P&H CK 0966
In the Punjab And Haryana At Chandigarh
Case No : CRM-M Of 32256 Of 2025

Kusodhwaj Jana Alias Kushad Jana

APPELLANT

Vs

Union Territory, Chandigarh

RESPONDENT

Date of Decision : 19-06-2025

Acts Referred:

Constitution Of India, 1950 — Article 21
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 483
Bharatiya Nyaya Sanhita, 2023 — Section 61(2), 318(2)
Indian Penal Code, 1860 — Section 120(B), 420

Citation : (2025) 06 P&H CK 0966

Hon'ble Judges : Sandeep Moudgil, J

Bench : Single Bench

Advocate : Satish Kumar, Rajiv Vij

Final Decision : SLP (Crl.) No.8523/2024."

Judgement

Sandeep Moudgil, J

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.189 dated 30.10.2024 under Sections 318(2), 61(2) of BNS registered at Police Station Sector-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:6283721104) 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: 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), 167/11 (8-0), 10 (8-0), 169//8/1 (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 300 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 Ms Asit Pramanik M/S Diamond Gold Jewellers SCO No 3-36 Sec 17 CUT 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 for the last more than 15 years and is running her business with the name and style of M/s Asit Diamond Gold jewellers situated at 35. 36, Second Floor Sector 17 C, Chandigarh and the complainant is the sole proprietor of the above said firm. That the accused persons are all relatives and they all are engaged in the profession of making gold and diamond jewellery and other allied products and they have been working with the complainant A for the last more than 7-8 years. The complainant has been provided the raw gold to the accused persons along with the designs and the accused person along with the designs and the accused persons have been making the jeweler for the clients of the complainant. Apart from this, the accused persons are also dealing with the repair as well as polishing of the gold jewellery. The complainant has been settling the quantity of the gold every month with the accused persons have been providing all the details of the gold and were also settling the quantity of the gold being provided by the complainant for manufacturing of the gold ornaments on monthly basis and the accused persons have been positively performing their jobs being assigned to them. That in the month of July 2024, the complainant in the regular course of business contacted the accused persons and told them to prepare the gold ornaments for his 8-10 clients. On 25.07.2024, the accused no. 1 & 2 came to the shop of the complainant and took 160 gm of raw gold (24 Carats) & also took a gold set of 140 gm (22 Carats) for getting necessary repairs which has been given by one of the clients of the complainant. At the time of taking the old she gold set and will deliver the same at the so s told the complainant that they will do the necessary repair of the gold set and will deliver the same at the shop of the complainant. It was also told by the accused no. 1 to 5 that they will make the gold ornaments from raw gold for the clients of the complainant within 15-20 days. Since the accused persons have been working with the complainant for the last 7-8 years and made a good belief and image in front of the complainant and

due to this reason, the complainant had given the raw gold as well as the already prepared gold set to the accused persons and have not smelled any foul play on their part. That after passing of the stipulated period as assured by the accused persons, the complainant in the second week of August 2024 called the accused persons and told them to deliver the repaired gold set as well as the ornaments which were made by them from the raw gold of the complainant. At that time, the accused no. 3 & 4 told the complainant that the gold set has not been repaired. It was also requested by the accused no. 3 & 4 that they will carry out the necessary repair within one-two days and will deliver the entire gold ornaments (repaired gold set as well as fresh gold ornaments) at the shop of the complainant within one-two days, to which the complainant has agreed for the same. That again after passing of the stipulated period, when the complainant called the accused no. 3 & 4, they have not responded to the calls made by the complainant. The complainant has also called the accused 1, 2 & 5 but he was shocked and surprised to see that the accused no. 1, 2 & 5 have also not responded to the calls made by the complainant. Since the clients of the complainant have been continuously demanded their gold ornaments and on the other hand, the accused no. 1, 2 & 5 have not delivered the gold ornaments at the shop of the complainant, as such, the complainant was left with no other option but went to the house of the accused persons at Naya Gaon and on reaching there, the complainant was shocked and surprised to see that the house of the accused persons was lying locked. Thereafter, the complainant again contacted the accused no 1 to 4 on their mobile numbers but their mobile numbers were Iving switched off. The complainant also called the accused no. 5 and after so many efforts, the accused no. 5 received the call of the complainant and when the complainant inquired about the gold ornaments as well as the gold set which was given to them for manufacturing and repairing, then the accused no. 5 clearly told the complainant that he is not having any gold with him and has no concern with the gold given by the complainant for manufacturing and repairing. Hearing such thing from accused no. 5, the mind of the complainant was shocked as he has never expected any such incident from the accused persons and has never dreamed of that the accused persons will cheat the complainant in such a manner. It is relevant to mention here that from 16.08.2024 onwards, the complainant have been regularly contacting the accused persons and has been regularly visiting the house of the accused persons to get his gold ornaments as well as the gold set weighing 300 gm in total but the complainant failed to get the whereabouts of the accused persons... That on 18.08.2024, the complainant again went to the house of the accused persons at Naya Gaon and the house of the accused persons was again lying locked. On inquiring from the neighbours, the complainant came to know that the accused persons have left the house and have gone to their native place in West Bengal. That from the above said facts, it is clear that the intentions of the accused persons are malafide and they in a preplanned manner by hatching a criminal conspiracy with malafide intention, deliberately and intentionally in order to cheat and play fraud with the complainant have misappropriated 160gm of

raw gold for making gold ornaments from the complainant and also taken one gold set of 140 gm for getting the necessary repair and the accused persons after getting the gold have neither made the gold ornaments nor carry out the necessary repair of the gold set and duped the entire 300 gm of gold of the complainant amounting to Rs. 21 Lakhs approximately. The complainant is running from pillar to post to get the whereabouts of the accused persons and to recover his gold from the accused persons but all the efforts made by the complainant are in vain. It is submitted here that the complainant also came to know that the accused persons in connivance with each other have also played fraud with other jewellers and misappropriated gold of other jewellers as well, who were also making the gold ornaments through the accused persons. 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 300 gm may kindly be recovered from the accused persons and oblige. Thanking you.s. Asit Pramanik, Asit Pramanik Proprietor of M/s Asit Diamond Gold Jewellers SCO No. 35-36 Second floor Sector 17 C Chandigarh M. 9653137983, 9877379879 ICMS/2024/024532, Dated 22.08.24, made by Mr. Asit Pramanik M/s Diamond Cold Jewellers SCO No.36-37 Sector 17, UT. Chandigarh Cheating amount Rs. 21 Lakh approx, ICMS/2024/024537 Dated 22.08.24, made by Pradip Panja R/o SCO No 40 Sector 23 CUT Chandigarh Cheating amount Rs. 4,34,000/-, ICMS/2024/025254 Dated 29.08.24, made by Ms. Anjana Kalra R/o Sai Gems Jewellers Booth No 42-43 Sector 38 C UT Chd Cheating amount 3,50,000/- and ICMS/2024/024535 Dated 27.08.2024 made by Anuj Berma R/o 46 FF Sector 23 CUT Chandigarh Cheating amount Rs. 2,05,000/-and ICMS/2023/023535 Dated 22.08.2024, made by Rupesh Kumar R/o H. No 786 Trivedi Compld Mubarakpur SAD Nagar PB Cheating Amount Rs 1,10,000/- Total amount Rs 31,99,000/- approx against Kusodhwaj Jana Tapati Rani, Sanjay & Others after inquiry and Approval from Senior officer received In the Police Station. As per ICMS/2024/024532 Dated 22.08.2024, made by Ms Asit Pramanik M/s Diamond Gold Jewellers SCO No 3-36 Sec 17 C UT Chandigarh and after conducting inquiry and Approval from senior Official for offences under section 318(2), 61(2) BNS of 2023 against Kusodhwaj Jana Tapati Rani, Sanjay & Others ordered to register case against them. On whom FIR No 189 Dated 30.10.2024 under section 318(2), 61(2) BNS of 2023 PS 17 Chandigarh against Kusodhwaj Jana Tapati Rani, Sanjay & Others registered in the police station original Complaint along with the copy of FIR for investigation. I SI had taken I SI, C Parmod Kumar 3931/cp for investigation departing to the area of police station Copy of the FIR.'

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 manufactures Gold and diamond jewelery for the complainant and

other jewellers 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 further submits that the articles which were provided to the petitioner have already been returned to the complainant. 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 the 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 is a habitual offender as he is involved in other FIR i.e. FIR No. 188 dated 30.10.2024, under Sections 420/120-B IPC 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. 03 months and 02 days, 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 *Nikesh 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.