



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

**CRM-M-62987-2024
Decided on: 18.03.2025**

Ashwani Kumar and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: **Mr. Harjinder Singh, Advocate and
Mr. Paras Khindri, Advocate,
for the petitioners.**

Mr. Adesh Pal Singh, AAG, Punjab.

**Mr. Deepak Arora, Advocate,
for the complainant.**

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
111	30.10.2024	Division No.4, District Police Commissionerate, Jalandhar	316(2), 318(4), 61(2), 351(3) of BNS, 2023

1. The petitioners apprehending arrest in the FIR captioned above have come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.

2. As per paragraph 3 of the status report, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offenses	Police Station
1.	110	30.10.2024	316(2), 318(4), 61(2), 351(3) of BNS	Division No.2 Jalandhar
2.	112	30.10.2024	316(2), 318(4), 61(2), 351(3) of BNS	Division No.2, Jalandhar

3. The facts and allegations are being taken from the translated copy of FIR annexed to the bail petition as Annexure P-1, which reads as follows:

“To The Commissioner of Police Commissionerate Jalandhar. Sub: Registration of FIR against Manni son of Aswani Kumar, Sunny son of Ashwani Kumar and Ashwani Kumar son of not known all residents of 76, New Ashok Nagar, Near Shenai Palace, Jalandhar having thier shop at WA, 218, Bhatta Wali Gali, Bazar Kalan, SarafaBazaar Jalandhar in the name of SM Jewels for cheating, fraud and mistrust by embezzling



valuable gold (22 K) of the applicant. Sir, 1. That M/s SBM Jewels is a proprietor firm duly registered with GST Authorities and is having its office at W.G, 395, Ground Floor, NiwanSuraj Ganj, Jalandhar and undersigned applicant/complainant Mukul is fully competent to file this complaint being the sole proprietor of the said firm and is also looking after the day to day affairs of firm. 2. That the applicant is the renowned wholesaler Gold Jewellery of the town and is known for high commercial honesty in the trade circle. 3. That the aforementioned accused namely Manni son of AswaniKumar, Sunny son of Ashwani Kumar and Ashwani Kumar are the Gold Smiths and undertake job work from various jewellers for finishing the gold ornaments as well as embedding pearls and other stones on contract basis from various jewellers. The aforementioned accused are widely known for their proficiency in undertaking the above referred job on contract basis at competitive prices. 4. That the aforementioned accused(s) were widely known in the market for their work had approached the complainant for procurement of job work from the complainant by representing that he has the substantial competent workers/labour for doing the necessary job work and had assured the complainant to execute the job work with transparency, honesty and high craftsmanship skills, as such on the basis of the representation of aforementioned accused, complainant had started issuing them the gold for finishing and embedding their own from time to time. The above named accused (s) further requested the complainant to pass on a word of reference to Mr. Kunal Chauhan partner of M/S SBM Gold elder brother of complainant firm. 5. That the aforementioned accused were paid their job work amount in cash at the time of they return back the said gold ornaments. 6. That by virtue of the efficient dealing, high craftsmanship skills, competent job work rates as well as timely return of the finished as well as embedded gold ornaments the aforementioned accused(s) earned good faith of the complainant who started diverting gold for job work in high volumes. 7. That due to ongoing festival season of Navratri, Karwa Chauth, Diwali, Dhanteras as well as high volumes of forth coming marriages in the month of November and December, the complainant gave him the gold ornaments totalling to 710.600 grams on 18.10.2024 & 19.10.2024 respectively. 8. That the aforementioned accused told the complainant that due to heavy rush/business for the job work of the gold ornaments he shall be able to accomplish the job work of finishing and embedding of 710.600 grams of gold by 22.10.2024. 9. That on the said date the complainant tried to contact the accused but could not established any contact with them,



moreover the complainant had learnt from his brother as well as from the other jewellers of the wholesale market that all the accused were not available. 10. That the complainant got further panicky when he received certain calls from other jewellers who had also given gold to the aforementioned accused(s) for job work and the other jewellers also joined the complainant to search for the aforementioned accused(s) but they all were unable to establish contact with them. 11. That it is the strong apprehension of the complainant that the aforementioned accused (s) had fled with the valuable gold of the complainant and the value of which as on the basis of today's gold price of 22 K gold is Rs.53 lacs approximately, in addition to the gold of his brother's firm as well as various other jewellers of the city, who were also victim of well-planned conspiracy of all the aforementioned accused(s) in playing fraud with dishonest intention by embezzling the valuable gold which was given to aforementioned accused(s) on trust basis for doing the job work on labour rate. 12. That the complainant is appending alongwith this complaint pen drive containing certain video clips of the accused Manni. 13. That the complainant has learnt from reliable sources that all the aforementioned accused (s) are trying to flee the country after playing fraud with the complainant as well as various jewellers of the city. It is therefore prayed that strict action may kindly be taken against the above said accused namely Manni son of Ashwani Kumar, Sunny son of Ashwani Kumar and Ashwani Kumar son of not known by registration of FIR under the provision of law and the gold ornament jewellery may kindly be got recovered from them, in the interest of justice.”

4. The petitioners' counsel prays for bail by imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioners and their family.

5. The State's counsel opposes bail and refers to the status report dated 17.12.2024.

6. It would be appropriate to refer to the following portions of the status report dated 17.12.2024, which read as follows:

“3. THE ROLE OF ASHWANI KUMAR & SUNNY (PETITIONERS)

That M/s SBM Jewels filed complaint no. 4657-PT00 against Manni, Sunny & Ashwani Kumar on 28.10.2024 with the allegations that Manni, Sunny & Ashwani Kumar are doing the job work of ornaments making from various jewelers for finishing the gold ornaments as well as embedding pearls and other stones on contract basis from various jewelers as goldsmiths. In connivance with others, Manni, Sunny &



Ashwani Kumar hatched a criminal conspiracy to cheat various gold smiths, including the complainant's firm. Manni, Sunny & Ashwani Kumar intended to cheat and induce the goldsmiths, including the complainant's firm, to take gold. Manni, Sunny & Ashwani Kumar took 710.600 grams from M/s SBM Jewels through vide bill no. 41 & 42 for making gold ornaments on 18-10-2024 & 19-10-2024 with promise to make ornaments till 22-10-2024. But neither Manni, Sunny & Ashwani Kumar returned their jewellery nor their gold to the complainant firm. On demand by the complainant from Manni, Sunny & Ashwani Kumar, they threatened them on the pretext that Manni eloped with all gold. The Preliminary enquiry was done by the Assistant Police Commissioner. Special Branch & Criminal Intelligence, Jalandhar, but Manni @ Money Verma, Sunny & Ashwani Kumar did not join the enquiry intentionally by hiding themselves. The present FIR no. 111 dated 30-10-2024 under sections 316(2), 318(4), 61(2), 351(3) of The Bharatiya Nyaya Sanhita, 2023, with PS Division no. 4, Jalandhar. After the registration of the present FIR, I.O. conducted the raids to arrest Manni, Sunny & Ashwani Kumar, but they hide themselves from the Police, though the anticipatory bails of the petitioners were dismissed by the Ld. Session Judge. Moreover, there are two more FIRs: (A) FIR no. 110 dated 30.10.2024 under section 316(2), 318(4), 61(2), 351(3) of The Bharatiya Nyaya Sanhita, 2023 with PS Division no. 2, Jalandhar. (B) FIR no. 112 dated 30-10-2024 under section 316(2), 318(4), 61(2), 351(3) of The Bharatiya Nyaya Sanhita, 2023 with PS Division no. 2, Jalandhar against Manni, Sunny & Ashwani Kumar. There are three FIRs registered against Sunny & Ashwani Kumar, including the present one, along with six more complaints against them for similar kinds of cheating and fraud with the public under consideration. Manni, Sunny & Ashwani Kumar absconded from law and, by concealing material facts, filed the present petition.

4. EVIDENCE AGAINST ASHWANI KUMAR & SUNNY (PETITIONERS)

That the present petitioners are doing family business, Ashwani Kumar is the father of Manni & Sunny under the name style of M/s SM Jewels. Manni used to collect gold from various shops, including the complainant's firm, and Ashwani Kumar and Sunny are working at shops for job work. They have committed embezzlement of all these valuable articles, which amounts to approximately Rs. 53 Lacs. CCTV footage is on the pen drive, and there are two bills with Manni's signature on them while taking gold from the complainant firm.”

**REASONING:**

7. Petitioner No.2-Sunny is the main accused, whereas, petitioner No.1-Ashwani Kumar, is father of the main accused. Thus, the role of the father cannot be ascertained with certainty but as far as the evidence against the petitioner No.2 Sunny is concerned, the evidence is sufficient and specific pointing out towards malicious intent. There is sufficient evidence that he intentionally embezzled the gold worth Rs.53 lakhs. As such, petitioner No.2 is not entitled for relief of anticipatory bail.

8. The evidence collected against both the father and son are not on same footing and the evidence against the petitioner No.1-Ashwani Kumar are on lower footing in comparison to evidence collected against petitioner No.2-Sunny, who appears to be the main accused and the mastermind and simply because petitioner No.1 is father of petitioner No.2, who is the main accused, he cannot suffer at this stage, as such, petitioner No.1 is entitled to bail and petitioner is not entitled to bail.

9. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail qua petitioner No.1. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

10. Given the above, the penal provisions invoked coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration of petitioner No.1 at this stage. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner No.1 makes a case for bail.

11. The investigation indicates that the petitioner No.1 is not the main accused, so the petitioner's bail shall not be treated as a precedent for granting bail to the other co-accused with a higher role.

12. Given above, provided the petitioner No.1 is not required in any other case, the petitioner No.1 shall be released on anticipatory bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

13. While furnishing a personal bond, the petitioner No.1 shall mention the following personal identification details:



1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

14. This order is subject to the petitioner No.1's complying with the following terms.

15. The petitioner No.1 is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioner No.1 shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner No.1 shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner No.1 shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

16. The petitioner No.1 shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner No.1 shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

17. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

18. This bail is conditional, and the foundational condition is that if the petitioner No.1 indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

19. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

20. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the

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official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

21. **Petition qua petitioner No.1-Ashwani Kumar is allowed and petition qua petitioner No.2-Sunny is dismissed** in terms mentioned above. All pending applications, if any, stand disposed of.

**(ANOOP CHITKARA)
JUDGE**

**18.03.2025
Jyoti-II**

Whether speaking/reasoned: Yes
Whether reportable: No.