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**IN THE COURT OF 12th ADDITIONAL SESSIONS JUDGE,
SURAT.**

CRIMINAL MISC. APPLICATION NO. 2781 of 2026

Exh.05

APPLICANT : Kapil Vinodbhai Gundigara,
(Accused) Aged about 27 years;
Occupation: Business;
Residing at 403, Silver Plaza, Opp.
Laxmi Hotel, Ashwinikumar, Surat.

Versus

OPPONENT : The State of Gujarat
(To be served through the Public
Prosecutor,
District & Sessions Court, Surat.)

APPEARANCE:

Mr. H. B. Goswami, Learned Advocate for the Applicant.

Mr. N. M. Chodvadiya, Learned APP for the Opponent.

Application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for Regular bail

:: J U D G E M E N T ::

[1.00] The present application has been filed by the applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short) for being enlarged on regular bail in connection with the offences punishable under Sections 316(5) and 54 of the Bharatiya Nyay Sanhita, 2023 ("BNS" for short) registered with Ashwinikumar Police Station, being C.R. No. Part - A : 11210013260035/2026.

[2.00] The facts in a nutshell, as narrated in the complaint, are to the effect that the present applicant - accused had contacted the complainant, who is carrying on business of diamonds, and the accused had taken the diamonds weighing 630.01 Karat valuing Rs.38,57,049/- during the period from 31/12/2024 to 17/01/2025, but, the applicant-accused has neither paid the amount of the said diamonds nor returned them to the complainant and therefore, since the applicant-accused has committed the offence of criminal breach of trust with the complainant, a complaint was given by the complainant to Ashvinikumar Police Station and offence under Sections 316(5) and 54 of BNS came to be registered on 19/01/2026, being C. R. No. Part-A: 11210013260035/2026.

[3.00] The anticipatory bail application preferred by the applicant, being Criminal Misc. Application No.983/2026, was

rejected *vide* the order dated 24/02/2026 and the applicant-accused has been arrested on 03/03/2026. The applicant-accused had also filed Criminal Misc. Application No.1696/2026 which was rejected on 17/03/2026 as the investigation was going on. Hence, the present application is moved by the applicant-accused for enlarging him on bail after filling of charge-sheet.

[3.01] On notice being issued to the opponent-State of Gujarat, learned Additional Public Prosecutor, Mr. N. M. Chodvadiya, has appeared and filed the affidavit sworn by the Investigating Officer at Exh.4.

[4.00] Heard the learned Advocate for the applicant, Mr. H. B. Goswami, and the learned Additional Public Prosecutor, Mr. B. N. Chavda for the opponent-State of Gujarat.

[4.01] Mr. H. B. Goswami, learned Advocate for the applicant, has submitted that the present application is filed by the applicant-accused for regular bail on various grounds stated in the application, *inter alia*, the dispute involved in the case is purely of civil nature; that the false allegations and concocted facts have been made in the FIR; that no criminal offence is made out from the complainant's case, which at best raises a civil dispute; that there are no accusations warranting serious offence attracting punishment of death sentence or life imprisonment, nor is the case triable by the Sessions Court and that the case is triable by the learned Judicial Magistrate. Further, the applicant,

who has been implicated solely as an associate of co-accused No. 2, faces no direct allegations in the entire FIR of personally appearing before the original complainant to receive any goods or diamonds as described, or of offering any assurances or trust. It is submitted that the investigation is completed and charge-sheet is also filed and keeping the applicant-accused behind the bars would amount to pre-trial incarceration as trial is likely to take long time. Ld. Advocate for the applicant has relied upon following judgments:

1. Bhagirathsinh Jadeja v. State of Gujarat - 1984 GLH 515;
2. Lambar Kozar v. Enforcement Director - 2000(3) Crimes 521;
3. Sanjay Chandra v. CBI - 2012 Cri LJ (General) 712;
4. Nidhi Jha v. State of Bihar - 2008(0) Pat(1) 592;
5. Kalpnaben Patel v. State of Gujarat - SCA No. 1535/2020 Gujarat High Court;
6. Dataramsingh v. State of Uttar Pradesh - 2018(0)AIGIEL SC 613580;
7. Chandrakant v. State of Himachal Pradesh - 2018 Law Suit SC 1477; and,
8. Dinesh Parwat v. State of Bihar - 2007 Cri LJ (General) 2890

[4.02] *Per contra* Mr. N. M. Chodvadiya, learned Additional Public Prosecutor for the opponent-State of Gujarat, has opposed the grant of regular bail of the applicant and reiterated the objections filed by the complainant at Exh.4. He

would submit that the applicant is facing allegations for the offences punishable under Sections 316(5) and 54 of BNS and if the application is granted, then, there are all chances of the accused tampering and hampering the investigation. He has submitted that there is one similar offence registered against the present applicant. He has further submitted that the involvement of the applicant in the commission of the offence of cheating with the complainant is very much evident from the FIR and investigation papers and therefore, the present application does not deserve any consideration. He has further contended that the earlier bail application of the present applicant-accused was rejected on merits and there is no changed circumstance. Therefore, the present application may kindly be rejected.

[5.00] I have perused the complaint, police papers, documents filed by the applicant, as well as the affidavit sworn by the Investigating Officer at Exh.4.

[6.00] Having heard the learned Advocate for the accused and learned APP for the State and taking into consideration the facts stated in the complaint, police papers and affidavit filed by the Investigating Officer at Exh.4, it is *prima facie* transpired that the present accused is facing the charges for commission of the alleged offences punishable u/s.316(5) and 54 of BNS, the complainant, Shri Nileshbhai Madhubhai Sukhadiya, has alleged that the applicant has taken total of 630.01 carats of diamonds valuing at Rs. 38,57,049/- and in spite of repeated demands, the

applicant did not pay the amount of the said diamonds nor as he returned it to the complainant and thereby, alleged offence of criminal breach of trust has been committed.

[7.00] It is also reflected from the investigation papers that the earlier bail application was rejected as the investigation was going on. Now the investigation is completed and after conclusion of the investigation, charge-sheet is already filed. It is also found from the affidavit of the Investigating Officer that except the present offence, the present accused has one criminal antecedent in his name. However, the offences alleged against the present accused are triable by the learned Judicial Magistrate and apprehension of the applicant-accused committing further offence can be taken care of by imposing suitable conditions. Considering the fact that the accused is resident of District: Surat and his presence can be secured at the time of trial and since there are huge number of cases pending before the learned Trial Court and time is likely to elapse in conclusion of the trial, this Court is of the considered view that discretion is required to be exercised in favour of the accused and keeping him behind the bars would amount to pre-trial incarceration.

[8.00] This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of *Prabhakar Tewari Vs. State of U.P. - (2020) 2 SCALE 448*; *Satender Kumar Antil v. Central Bureau of Investigation & Anr. (AIR 2022 SC 3386)*; *Bhagirathsinh Jadeja Vs. State of Gujarat [1984 (1) SCC 284]*;

Sanjay Chandra Vs. CBI (AIR 2012 SC 830); Dataram Singh Vs. State of U.P. & Anr. [2018(3) SCC 22]; Arnab Manoranjan Goswami Vs. State of Maharashtra [2021 (2) SCC 427]; and, Gudikanti Narasimhulu & Ors vs. Public Prosecutor, High Court of Andhra Pradesh - (1978)1 SCC 240. Obviously, the conclusion of trial will take time and keeping the accused behind the bars would be nothing but pre-trial conviction and therefore, considering the celebrated principle of bail jurisprudence that “bail is a rule and jail is exception” as well as the concept of personal liberty guaranteed under Article 21 of the Constitution of India and keeping in mind the ratio laid down by Hon'ble Supreme Court in the case of ***Prabhakar Tewari*** (*supra*) that pendency of criminal cases cannot be the basis for refusal of prayer for bail, the present application deserves consideration.

[9.00] In light of the aforesaid discussion, taking into consideration *prima facie* material placed on record as well as role attributed to the present accused, the applicant is in custody since 01.03.2026, nature and severity of the offences alleged, punishment prescribed for the alleged offences, the fact that charge-sheet is filed, time is likely to elapse in the conclusion of trial, the possibility of availability of the accused for trial and keeping the accused behind the bars would amount to pre-trial incarceration, this Court is of the considered view that discretion is required to be exercised in favour of the accused and he is required to be enlarged on bail subject to certain conditions. In the result, the following order is passed:

:: ORDER ::

(1) The present bail application preferred by the applicant-accused is hereby allowed.

(2) The applicant-accused, Kapil Vinodbhai Gundigara, is ordered to be released on bail on his executing the personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) and furnishing surety of like amount to the satisfaction of the learned Trial Court in connection with the offences punishable under Section 316(5) and 54 of BNS registered with Ashwinikumar Police Station, being C.R. No. Part - A : 11210013260035/2026, subject to the following conditions that he shall:,

(a) not directly or indirectly make any inducement, give threat or promises to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the learned Trial Court or to any police officer or tamper with the evidence;

(b) maintain law and order and not indulge in any criminal activities of similar nature;

(c) surrender his passport, if any, withing a week before the learned Trial Court. If not, he shall file an affidavit to that effect;

(d) not leave Gujarat without prior permission of the learned Trial Court;

(e) furnish the complete documentary proof of latest and permanent address of his residence to the Investigating Officer and also to the learned Trial Court and shall not change the residence without permission of the Court concerned;

(f) provide his electronic mail address, contact number and messaging application used by him as well as the surety before the concerned Trial Court at the time of execution of the bond and shall not change the same without prior permission of the learned Trial Court concerned;

(g) shall mark his presence once in a month before the concerned Police Station till the conclusion of the trial.

(h) shall not act in any manner injurious and prejudice to the interest of the prosecution; and,

(i) not take undue advantage of his liberty or misuse liberty.

(3) Breach of any of the above conditions shall invite cancellation of bail.

(4) It is clarified that the learned Trial Court shall be at liberty to modify or alter any of the aforesaid conditions in accordance with law.

(5) Yadi be sent to the concerned Trial Court as well as concerned police station.

Signed & Pronounced in the open Court today i.e. on this 20th day of April, 2026.

Date : 20/04/2026.

Place: Surat.

(Kamlesh Nathabhai Prajapati)
12th Additional Sessions Judge, Surat.
(Code: GJ00886)

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