# Mohit Garg and Sudhir Gupta Vs State of Delhi

## CRLMM 334 and 807 of 2002

**Court:** Delhi High Court

**Date of Decision:** Aug. 5, 2002

**Acts Referred:**

Negotiable Instruments Act, 1881 (NI) â€" Section 138

**Hon'ble Judges:** Mahmood Ali Khan, J

**Bench:** Single Bench

**Advocate:** Yashobant Das and K.B. Andley and Munish Tyagi and Rajesh Mahajan, for the Appellant; Richa Kapoor, for the Respondent

## Judgement

@JUDGMENTTAG-ORDER

Mahmood Ali Khan, J.

These two petitions may be decided by this common order. Both the petitions have been filed for grant of bail in

the same case. The case was registered on the complaint of Mr. Prem Chand Gupta, proprietor of M/s. Mayur Textiles and his wife Mrs. Pushp

Lata Gupta, proprietor of M/s. Expo Tex. It is alleged that Mr. Sudhir Kumar Gupta, petitioner is uncle of Mr. Mohit Kumar Garg. Both had

introduced themselves to be the Director of M/s. Pahanawa Boutique India. They represented that they were importer and exporter of garments,

fabrics and handicrafts and, inter alia, had their showroom in Budapest in Hungary. They purchased grey cloth from the complaints from time to

time and made payments by cheques and in cash. The goods of the value of more than Rs. 90.00 lacs was sold to both these petitioners and their

firm M/s. Pahanawa Boutique Ltd. Out of the total sale of Rs. 39.35 lacs by M/s. Mayur Textiles a sum of Rs. 26.00 lacs was paid and out of Rs.

49,18,373.75 sale the petitioners paid only Rs. 28,25,228.00 to M/s. Expo Text The petitioner Mr. Sudhir Kumar Gupta issued cheque dated

7.3.2000 for Rs. 3.00 lacs to Mr. Prem Chand Gupta, complainant and issued two cheques dated 7.3.2000 for Rs. 3.00 lacs each to the complainant Mrs. Pushp Lata Gupta. He assured that the cheques will be honoured and, Therefore, lest for Hungary assuring that the outstanding

amount of Rs. 16.75 lacs due to the firm of the complainant Mr. Prem Chand Gupta and Rs. 25.50 lacs payable to the firm of Mrs. Pushp Lata

Gupta would be paid by his nephew, the petitioner, Mohit Kumar Garg to him he would sent or would arrange money from Hungary. The

petitioner Sudhir Kumar Gupta used to receive the supply of goods through his agent Naresh Kumar Goel who used to collect invoices and LRs

for and on behalf of M/s. Pahanawa Boutique India and on behalf of these two petitioners. The complainant used to get the acknowledgement of

the receipt of the purchases from these two petitioners and other agents namely Devanand, Kamal etc. The cheques issued by Sudhir Kumar

Gupta on presentation to the bank were dishonoured. The complainant came to know that the petitioners have cheated other persons also in the

same manner. The complainant approached Mohit Kumar Garg and demanded money but he refused and in fact, intimidated them. These

petitioners are trying to run away to Hungary.

2. During the investigation of the case, as per APP sufficient material has been collected to show involvement of these two petitioners in the

commission of the offence of cheating the complainant of a large sum of money. Counsel for petitioners have stated that false case has been made

against these petitioners as the goods supplied was of inferior quality. They further contended that the complainant have already filed a complaint

u/s 138 Negotiable Instrument Act against the petitioners in which charges have been framed against petitioner Sudhir Kumar Gupta and petitioner

Mohit Kumar Garg has been discharged. It is also contended that petitioner Sudhir Kumar Gupta is in judicial custody for the past nine months.

The trial will take long. The complaint u/s 138 of Negotiable Instruments Act and a civil suit are already pending against him. He is no more

required for investigation purposes, Therefore, he should be granted bail. Argument of counsel for petitioner, Mohit Kumar Garg is that he was

only an employee of Sudhir Kumar Gupta and has nothing to do wit the firm which allegedly purchased the goods from the complainant. It was

stated that he is also in judicial custody and is not required for investigation purpose, Therefore, he should also be granted bail.

3. Counsel for both the petitioners have referred to Ashok Dhingra Vs. N.C.T. of Delhi, in support of their argument that the petitioners should be

granted bail.

APP opposing the bail has argued that Sudhir Kumar Gupta was granted anticipatory bail with the condition that he will not leave the country but

he violated the condition of bail and went to Hungary. Therefore, there is every possibility of his fleeing from justice. It was also argued that the

allegations against these petitioners are very grave and serious. They have cheated the complainant of over Rs. 42.00 lacs making fraudulent and deceitful representation that they had a showroom in Hungary and they would make the payment of the goods supplied. It was also contended that

after purchasing the goods from the complainant these petitioners had also sold it to other parties and those purchasers of the goods from the

petitioners are prosecution witnesses. It was also contended that the petitioner Mohit Kumar Garg had also received the goods supplied and was

representing his uncle Sudhir Kumar Gupta and was managing the affairs of the business on behalf of Sudhir Kumar Gupta and, Therefore, his

complicity with Sudhir Kumar Gupta is established by the material evidence which has been collected on record.

4. In the first case of Ashok Dhingra v. NCT of Delhi (supra) the Supreme Court has held that the Trial Court and the Sessions Court while

exercising powers u/s 439(1) have to exercise the judicial discretion in considering the question of granting bail. It was also held that over-riding

consideration in granting bail are the nature and gravity of the circumstances in which the offence is committed, the position and the status of the

accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; the likelihood of repeating the offence; the

likelihood of jeopardising his own life being faced with a grim prospect of possible conviction in the case; the likelihood of tampering of evidence.

5. In the second case of Ashok Dhingra v. NCT of Delhi (supra) the Supreme Court has granted bail to the accused on the ground that he was in

custody since long and continuance of his detention in the jail during pre-trial stage was not considered in the interest of justice. I have given careful

consideration to the case law cited by the petitioners.

The APP has not denied that Sudhir Kumar Gupta petitioner is the proprietor of the firm and that the goods were purchased by him defrauding the

complainant and it was he who claimed to have showroom in Hungary. The other petitioner Mohit Garg is his nephew. Allegation against him is

that he was representing Sudhir Gupta and was looking after his business and has received the goods. According to petitioner, Mohit Garg he was

only an employee of Sudhir Kumar Gupta. It is not disputed that Sudhir Kumar Gupta petitioner is the proprietor of the firm. Role assigned to

Mohit Garg petitioner in this crime is distinguishable from main accused Sudhir Kumar Gupta. He is relative of Sudhir Kumar Gupta. The APP has

not stated that he had personally benefited from this crime. He is in jail since 3.2.2002. I am inclined to grant bail to petitioner Mohit Garg.

6. In this case the petitioner Sudhir Kumar Gupta had violated the condition of anticipatory bail and he had left India. Considering the nature of the

offence which has been committed, which is quite grave and serious, there is every possibility that he may not be available at the trial. APP has

pointed out that the persons to whom this petitioner had sold the goods are prosecution witnesses. There is every possibility that petitioner Sudhir

Kumar Gupta may tamper with the evidence also. Therefore, his case is distinguishable from the facts of the cases which has been cited. Applying the law laid down in Ashok Dhingra reported in IV(2000) CCR 50 it may be held that the petitioner Sudhir Kumar Gupta is not entitled to the

grant of bail on the basis of the order in Ashok Dhingra Vs. N.C.T. of Delhi, . His bail application is accordingly dismissed.

7. The petitioner Mohit Kumar, however shall be released on furnishing a personal bond in the sum of Rs. 25,000/- with two sureties in the like

amount to the satisfaction of the trail court with further condition that he shall surrender his passport, if any, and he shall not leave the country

without prior permission of the trial Court.

Both the petitions are disposed of.