

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1967 of 2025

Date:

Order with Signature of Judge

Mr. Raj Ali Wahid Kunwar, Advocate for the Applicant.
Mr. Aarsal Amjad Hashmi, Advocate for the Complainant.
Ms. Robina Qadir, DPG.

Date of Hearing: 18.08.2025

Date of Announcement: 12.09.2025

ORDER

MUHAMMAD HASAN (AKBER), J.- The concession of Post-arrest bail has been sought in the instant application in Crime No. 295/2025, registered under Section 489-F PPC at Police Station Darakhshan, Karachi. Earlier, the bail application of the applicant/accused was dismissed by the learned VIIIth Additional Sessions Judge, Karachi (South) vide Order dated 21.07.2025, whereafter the applicant has approached this Court.

2. Brief allegations in the FIR are that the complainant is a businessman and became acquainted with the present applicant, proprietor of "Zar Zameen" real estate agency who persuaded him to invest Rs.9,000,000/- in return for profit. Based thereon, an agreement was executed whereby Zeeshan Mirza undertook to repay the principal amount along with Rs.4,000,000/- profit by 31.01.2025, but he failed to do so. Upon repeated demands, he issued five cheques totaling Rs. 13,000,000/- which were deposited in the complainant's bank account but were dishonored due to insufficient funds.

3. Learned counsel for the applicant has contended that the applicant is a reputable Realtor but has been falsely implicated in a business dispute whereas the disputed cheques were only given as

‘Security’ hence Section 489-F PPC is not attracted. It is further contended that the FIR is *mala fidely* delayed and is filed only to harass and blackmail, while no civil recovery suit has been instituted by the complainant. It is further contended that the case is purely of civil nature wherein all evidence is documentary and the matter calls for further inquiry. Lastly contends that the offence does not fall within the prohibitory clause of section 497 Cr.PC., making the applicant entitled to bail as a rule.

4. Learned counsel for the complainant and DPG opposed the bail application and contended that considering the magnitude of the offence and loss caused, the accused does not deserve concession of bail. It is further argued that offences under Section 489-F PPC are of serious nature, affecting public confidence in commercial dealings and therefore no case for bail is made out.

5. Heard learned counsel for parties and learned DPG. Perusal of record reflects that there was an ‘**Investment Agreement**’ dated 12.08.2025 executed between the parties, **Clause 4** whereof provided that upon signing of such agreement, the applicant had issued **SURETY** cheque(s) in favour of the complainant. Record further reflects that a **Civil Suit No.7068 of 2025** has also been filed by the present applicant seeking Declarations with respect to the same cheque(s) which are subject matter of instant case. The present complainant is also one of the Defendants in the said suit. When inquired from the complainant side, the execution of the Investment Agreement was admitted; so also the filing and pendency of the above referred Civil Suit was admitted. It is also not denied that the present complainant is a Defendant in the said Suit and the fact that subject cheques are part of the dispute in the said Suit, was also not denied.

6. In the case of **Mian Allah Ditta**¹ it has been held by the Honourable Supreme Court that every transaction where a cheque is dishonoured would not constitute an offense. In **Ali Anwar Paracha**²

it has been held by the Supreme Court that the foundational elements to constitute an offence under section 489-F are the issuance of cheque, with dishonest intent, and the issuance of cheque towards repayment of loan or fulfilment of an obligation. In **Abdul Rashid**³ and **Khizer Hayat**⁴ cases the Supreme Court held that where there was business relationship between the parties and the cheques mentioned in the FIR were issued as Surety or Guarantee, the same were held as falling short of the requirements of an obligation within the meaning of section 489-F PPC. and on such ground, the case was held to be of further enquiry and bail was granted. A Three-Member Bench of the Honourable Supreme Court in an unreported case of **Muhammad Anwar**⁵ held that where cheque was given as a SECURITY, the elements of section 489-F PPC. are not attracted and bail was granted. In the case of **Muhammad Tanveer**⁶ where a civil suit for declaration with respect to the subject transaction was pending adjudication before the court of competent jurisdiction, it was held that the possibility of ulterior motives cannot be ruled out. In **Noman Khaliq**⁷, a case where there was business relationship between the parties and the allegation of dishonour of cheque under section 489-F PPC was levelled, it was observed that the provision of section 489-F PPC are not intended by the legislature to be used for recovery of an alleged amount but civil proceedings provide remedies inter alia under Order XXXVII CPC. In this view of the matter the question whether the cheques were issued towards repayment of loan or fulfilment of an obligation within the meaning of section 489-F, was held to be a question which should be resolved by the trial Court after recording evidence.

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1. *'Mian Allah Ditta v. The State and others'* 2013 SCMR 51
 2. *'Ali Anwar Paracha v. The State'* 2024 SCMR 1596
 3. *'Abdul Rashid v. The State'* 2023 SCMR 1948
 4. *'Khizer Hayat v. The State'* 2021 MLD 1597
 5. *Unreported Judgment dated 03.06.2024 in 'Muhammad Anwar v. The State and another' in Criminal Petition for Leave to Appeal No.340 of 2024*
 6. *'Muhammad Tanveer v. The State'* 2023 SCMR 581
 7. *'Noman Khaliq v. The State'* 2023 SCMR 2122

7. The admitted facts in the present case are that parties had a business relationship *inter se*; there is an 'Investment Agreement' executed between them; such agreement admittedly contains a clause which clearly stipulates the subject cheque(s) having been issued as a 'Surety'. Also admittedly, **Civil Suit No.7068 of 2025** filed by the applicant is pending adjudication, which has been filed with respect to the same subject cheque(s) and the present complainant is a Defendant in the said suit. It is also claimed by the applicant that during course of their business transactions the claimed amounts have been repaid by him, which is also required to be considered in trial. All these facts bring the case of the applicant within the ambit of Further Inquiry as envisaged under section 497(2) Cr.PC. The applicant is detained since 28.04.2025 whereas maximum sentence for offence under section 489-F PPC. is three years, hence the offense does not fall within the Prohibitory Clause of section 497 Cr.PC., entitling the applicant to bail on the strength of **Muhammad Sarfaraz⁸** case.

8. As regards the last objection raised by the complainant that multiple FIRs have been registered by different parties against the same applicant for dishonour of cheque(s), attention is drawn towards the ratio in the cases of **Ali Anwar Paracha²** and **Zafar Nawaz⁹** holding therein that mere registration of other criminal cases against an accused does not disentitle him for the grant of bail.

9. Upshot of the above discussion is that, on a tentative assessment and following the ratio settled in the cases discussed above, a case for grant of post-arrest bail is made under Section 497 Cr.PC. The bail application is therefore allowed, and the applicant Zeeshan Mirza son of Akhter Mirza is admitted to post-arrest bail subject to furnishing bail bond for a sum of Rs.100,000/- with one surety of like amount to the satisfaction of the trial Court. The applicant shall fully cooperate with investigation and the trial Court; no unnecessary adjournment shall be granted; and in case of misuse

of concession of bail, the complainant may avail remedy in accordance with law. The observations made hereinabove are tentative in nature which shall not influence the learned trial Court while independently adjudicating the case on its own merits. The bail application stands allowed in the above terms.

J U D G E

8. *‘Muhammad Sarfaraz v. The State’ 2014 SCMR 1032*
9. *‘Zafar Nawaz v. The State’ 2023 SCMR 1977*