

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 624 of 2025

Date: Order with Signature of Judge

Date of hearing : 18.08.2025
Date of Reasons : 23.09.2025
Applicant : In person
Complainant : Through Raja M. Khalil-uz-Zaman, Advocate
The State : Through Ms. Rubina Qadir, D.P.G.

ORDER

MUHAMMAD HASAN (AKBER), J.- Through the instant bail application, the applicant seeks pre-arrest bail in Crime No.81/2021, registered under Section 489-F PPC at Police Station Gulshan-e-Iqbal, Karachi. Earlier, the bail application of the applicant was dismissed by the learned VIth Additional Sessions Judge, Karachi (East) vide order dated 06.03.2025, whereafter the applicant has approached this Court.

2. Brief facts of the case as narrated in the FIR are that the complainant, running a business named Mughal Motors, sold a Toyota Corolla XLI on 08.03.2018 for Rs. 31,50,000. In return, Ali Shah issued four cheques totaling the said amount, but all were dishonored upon presentation. Despite repeated demands, Ali Shah failed to make the payment, leading to the registration of the FIR.

3. Applicant in person denies the charges, claiming false implication due to the complainant's malafide intentions. He states the FIR, filed three years late, is doubtful and the dispute is civil, not criminal with no supporting documents or witnesses from the complainant, the case lacks credibility. He further states that the police raids are harming his reputation.

4. Learned counsel for the complainant and D.P.G opposed the bail application and contended that the offence under Section 489-F PPC is criminal, not civil, as the applicant issued dishonored cheques; The complainant has provided sufficient

evidence, and the applicant's claim of false implication is baseless. The applicant's actions show an intent to evade justice and his request for pre-arrest bail is unwarranted; Therefore, the counsel requests the bail application be dismissed.

5. Heard applicant in person and learned counsel for the complainant as well as learned DPG and perused the record. While considering the record, it appears that the allegation against the applicant is that he issued four cheques in lieu of payment for a vehicle purchased from the complainant. However, the circumstances of the case reveal that the FIR was registered after a **considerable delay of more than three years** without any plausible explanation. **Such an unusual delay casts doubt on the veracity of the prosecution story and warrants Further Inquiry** into the genuineness of the transaction as well as the actual liability of the applicant. in terms of Section 497(2) Cr.P.C. Since the alleged offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C., the applicant has made out a case for confirmation of bail. The principle that bail is a rule and jail is an exception must also be kept in view, especially where the prosecution's own case suffers from delay and material deficiencies. It is also noteworthy that the matter essentially arises out of a **business transaction** between the parties relating to the **sale of a vehicle**, thereby giving the case a strong color of civil dispute. The complainant has **not placed on record any sale agreement, transfer documents or other supporting evidence to substantiate the transaction** beyond the narration of the FIR. These missing elements raise serious doubts which cannot be ignored at this stage. Furthermore, the applicant is **not a habitual offender nor has he any previous criminal record**. The police raids at his house and the apprehension of arrest further justify the applicant's plea that he is being subjected to undue harassment.

6. A brief survey on the principles settled by different **Three-Member Benches of the Honourable Supreme Court** while considering bail, in offences under section 489-F P.P.C., brings us to the following position:

- i. The ratio settled by a Three-Member Bench of the Honourable Supreme Court in '**Ali Anwar Paracha v. The State**' **2024 SCMR 1596** is that, **(a)** for offences not falling under the prohibitory clause of section 497 CRPC, grant of bail is a rule and refusal is an exception [same principle was followed in '*Muhammad Sarfaraz v. The State*'

2014 SCMR 1032]; **(b)** mere registration of other criminal cases against and accused does not disentitle him for the grant of bail, if on merits he has a prima facie case; and **(c)** 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.

- ii. Another Three-Member Bench of the Supreme Court in **'Zafar Nawaz v. The State' 2023 SCMR 1977** also held that (a) for offences not falling under the prohibitory clause of section 497 CRPC, grant of bail is a rule and refusal is an exception; (b) mere registration of other criminal cases against and accused does not disentitle him for the grant of bail, if on merits he has a prima facie case;
- iii. A Three-Member Bench of the Supreme Court in an 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** held that where cheque was given as a 'Security' the elements of section 489-F PPC. are not attracted and bail was granted.
- v. In **'Abdul Saboor v. The State through AG KPK' 2022 SCMR 592** it was held by a Three-Member Bench in 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. Identical principles were followed in **'Noman Khaliq v. The State' 2023 SCMR 2122**.

7. 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 pre-arrest

bail is made under Section 498 Cr.PC. This application is therefore allowed. The interim pre-arrest bail granted to the applicant vide order dated 10.03.2025 has already been confirmed on the same terms and conditions vide my short order dated 10.09.2025 and these are the reasons for the same. The observations made herein are tentative in nature and shall not be construed to prejudice the case of either party at trial.

J U D G E