

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1464 of 2025

Date: Order with Signature of Judge

Date of hearing: 28.08.2025
Date of Order: 23.09.2025

Mr. Wahaj Ali Khan, Advocate for the Applicant.
Mr. Ahmed Ali Ghumro, Advocate for the Complainant.
Ms. Rahat Ahsan, Addl. P.G.

ORDER

MUHAMMAD HASAN (AKBER), J.- Through the instant application, the applicant seek concession of pre-arrest bail in Crime No. 881/2024, registered under Section 489-F PPC at Police Station Ferozabad, Karachi. Earlier, the bail application of the applicant/accused was dismissed by the learned VIIth Additional Sessions Judge, Karachi (East) vide order dated 24.05.2025, whereafter the applicant has approached this Court.

2. Brief facts of the case as narrated in the FIR are that the complainant runs a car showroom business and had advanced a cash loan of Rs.30 million to his old friend Muhammad Sameer Gagai S/O Saleem Gagai, in the presence of a witness, for his cloth business. Initially, profit was paid on a partnership basis, but later the accused stopped payment. Upon demand for return of the principal, the accused issued three cheques totaling Rs.4.5 million from his brother's account at Bank Al-Habib, which were dishonoured due to insufficient funds. Thereafter, four further cheques amounting to Rs.10 million, issued from Faysal Bank, were also dishonoured when presented. Despite repeated contacts, the accused failed to return the money, avoided the complainant, and issued bogus cheques with mala fide intent.

3. Learned counsel for the applicant has argued that the applicant/accused with no prior criminal record, has been falsely implicated in this case without any financial obligation or agreement with the complainant. The FIR was lodged after an unexplained delay of almost 11 months, reflecting mala fide intent, and even

nominates both the applicant and his brother to harass and disgrace them. It is further argued that the cheques in question were never shown to be backed by any valid transaction, while all evidence is documentary, leaving no risk of tampering. It is further argued that the learned trial court failed to appreciate that at the bail stage, tentative assessment and benefit of doubt must go to the accused, especially in offences not falling under the prohibitory clause where bail is a rule and refusal an exception. It is further argued that the prosecution has shown no exceptional circumstances such as risk of absconding or repetition of offence. It is further argued that the FIR itself indicates ulterior motives and calls for further inquiry; hence, the applicant is entitled to bail as a matter of right.

4. Learned APG with the assistance of counsel for the complainant has argued that the applicant/accused obtained a huge amount of Rs.30 million from the complainant under the garb of business investment and thereafter issued several cheques, all of which were dishonoured, clearly establishing dishonest intention from the very inception. It is further argued that the accused has committed a serious financial fraud and deprived the complainant of his hard-earned money, and the mala fide conduct is evident from issuance of multiple bogus cheques. It is further argued that the delay in lodging the FIR has been duly explained by the complainant as he was continuously being assured by the accused of repayment, and such delay cannot be taken as a ground to extend extraordinary relief. It is further argued that pre-arrest bail is an extraordinary concession and cannot be granted to a person who has misused the trust of the complainant and cheated him of such a heavy amount, particularly when sufficient material is available connecting the accused with the commission of offence.

6. Heard learned counsel for parties as well as learned DPG and perused the record. The primary stance taken by the applicant is that no money was paid by the complainant to the applicant. Even during the course of hearing, no material has been brought on record to establish that any payment was actually made by the complainant to the applicant. The primary requirement under the provision of section 489-F PPC is the existence of an obligation. No witness or proof of such payment has been placed on record. Unless the complainant is able to establish that the cheque was issued by the applicant based upon some payment made by him, mere

existence of cheque would not be enough and in these circumstances, the statutory presumption of consideration attached with a cheque under the Negotiable Instruments Act, would be rebuttable. Moreover, the applicant even denies the signatures on the set cheques, which fact would also be required to be probed during trial. The circumstances of the case further reveal that FIR was registered after a **considerable delay of more than a year** without any plausible explanation. **Such an unusual delay casts doubt on the veracity of the prosecution story.** All these facts **cast doubt on the veracity of the prosecution story and warrant Further Inquiry** into the genuineness of the transaction as well as the actual liability of the applicant bringing the case with the ambit of Further Inquiry in terms of Section 497(2) Cr.P.C. The alleged offence also 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. 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. Some of 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., are as follows:

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 03.06.2025 is hereby confirmed on the same terms. 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