

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Bail Application No.S-143 of 2025
(Waheed Ali Abbasi Vs. The State)

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| DATE OF HEARING | ORDER WITH SIGNATURE OF JUDGE |
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For hearing of bail application.

ORDER.
08-05-2025.

Mr. Shah Muhammad Bango Advocate for applicant.
Mr. Aftab Hussain Shar Advocate for complainant.
Syed Sardar Ali Shah Rizvi, Additional P.G for the State.

Ali Haider ‘Ada’,J:- Through this Bail application, the applicant/accused, Waheed Ali son of Muhammad Hanif, by caste Abbasi, seeks the concession of pre-arrest bail in Crime No. 06 of 2025, registered under Section 489-F, PPC at Police Station Gambat. Prior to approaching this Court, the applicant had filed a pre-arrest bail application before the learned Sessions Judge, Khairpur, which was entrusted to the learned Additional Sessions Judge, Gambat. However, the same was declined vide order dated 15-02-2025, hence the applicant has preferred the present application before this Court.

2. Briefly, the facts of the instant case, as narrated in the FIR, are that the complainant allegedly purchased a plot from the applicant/accused in the presence of witnesses for a total consideration of Rs. 1,80,00,000/-, which was fully paid by the complainant. Subsequently, on 01-09-2024, the applicant/accused purportedly expressed his intention to return the sale consideration and in that regard, issued two cheques: Cheque No. 2280665601 dated 30-09-2024 for Rs. 900,000/- and Cheque No. 2280665602 dated 20-10-2024 for Rs. 900,000/-. When these cheques were presented before the concerned bank, both were dishonored on 20-11-2024. Consequently, the complainant lodged the FIR on 06-01-2025.

3. Learned counsel for the applicant/accused contends that the FIR is silent regarding the description or particulars of the alleged plot. He further points out that there is an unexplained delay of nearly three months in lodging the FIR after the issuance of the alleged cheques. The complainant has claimed to have paid a substantial amount to the applicant/accused; however, no documentary evidence or receipt has been produced to corroborate such payment. Learned counsel also submits that Mst. Sonia, the sister of complainant, was the legally wedded wife of the applicant/accused, but due to matrimonial discord, the applicant divorced her, where after the cheques and other belongings of the applicant/accused were allegedly misused. In support of this contention, the applicant has filed, under the cover of a statement, photocopies of the memo of Family Suit, Nikahnama and an application under Sections 22-A & 22-B Cr.P.C. He lastly submits that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C and the case calls for further inquiry within the meaning of subsection (2) of Section 497 Cr.P.C. Therefore, the applicant is entitled to the concession of pre-arrest bail. In support of his contentions, reliance is placed on the case ***Kabeer Ahmed Brohi vs the State 2025 MLD 364.***

4. On the other hand, learned counsel for the complainant has opposed the confirmation of interim pre-arrest bail on the ground that a cognizable offence is clearly made out from the contents of the FIR. He argues that there is no element of malafide on the part of the complainant in implicating the applicant/accused, as the cheques were admittedly issued in lieu of a substantial monetary amount. He further submits that the applicant/accused cannot claim the extraordinary relief of pre-arrest bail in a case involving a financial transaction of such magnitude. In support of his arguments, the learned counsel has filed a photocopy of the agreement purportedly executed between the complainant and the applicant/accused regarding the subject plot transaction. He has also placed reliance upon the cases reported as *2021 P.Cr.L.J 886*, *2002 SCMR 442*, *2019*

SCMR 1129, 2021 SCMR 1466, 2022 MLD 1065, 2010 YLR 2764, 2018 MLD 1521, 2009 SCMR 174, and 2022 MLD 1004.

5. Learned Additional Prosecutor General for the State contends that the instant case appears to be a result of a family dispute, as the record reflects that the applicant had divorced the sister of the complainant on 06-02-2021, as per the Divorce Deed available on page 33. He contends that it seems improbable that, just a few days later, on 09-02-2021, the applicant would enter into a plot sale agreement with the sister of his former wife, the complainant. It is further contended by the learned counsel that the Investigating Officer, during the course of investigation, found discrepancies in the signatures on the cheques in question. Upon verification from the concerned bank, it was revealed that the signatures on the dishonored cheques did not match those of the applicant/accused, thereby casting serious doubt on the genuineness of the transaction.

6. Heard learned counsel for the parties and perused the material available on record.

7. The record reveals that the cheques were allegedly issued by the applicant/accused on 30-09-2024 and 20-10-2024, which were subsequently dishonored and returned by the Bank along with the memo on 20-11-2024. However, the FIR was lodged on 06-01-2025, after an unexplained and considerable delay of nearly three months, which casts serious doubt on the genuineness of the prosecution's case. Reliance is placed upon the case of ***Kabeer Ahmed Brohi v. The State*** (as mentioned *supra*) and ***Riaz Ahmed v. The State 2024 YLR 1144***.

8. The statement filed by the Investigating Officer during the proceedings reveals that, upon verification of the cheques from the concerned Bank authorities, it came to light that the signatures on the cheques were different

from those of the applicant/accused, and the account had already been closed. These circumstances cast serious doubt on the prosecution's case. It is a well-established principle of criminal jurisprudence that the benefit of doubt, however slight, must be extended to the accused even at the bail stage. This principle has been consistently upheld by the Honourable Supreme Court in ***Salman Zahid v. The State through PG Sindh (2023 SCMR 1140)***, ***Fahad Hussain v. The State (2023 SCMR 364)***, ***Muhammad Eijaz v. The State (2022 SCMR 1271)***, and ***Muhammad Arshad v. The State (2022 SCMR 1555)***.

9. Moreover, the record reflects that there existed prior family relations between the parties, as the applicant/accused was the former husband of Mst. Sonia, the sister of the complainant. It is noted that divorce between them was effected on 06-02-2021. In such circumstances, it appears highly unconvincing that the applicant, shortly after the divorce, would have entered into a property transaction with the complainant, as reflected by the purported agreement dated 09-02-2021. Furthermore, the FIR alleges a substantial monetary transaction, yet no documentary proof, such as receipts or verifiable banking records, has been provided to substantiate the claim of payment. These factors raise serious doubts regarding the veracity of the prosecution's version. The scope of Section 489-F, PPC requires that the prosecution establish that the cheque in question was issued to fulfilled obligation or to repay an outstanding liability. However, in the present case, this essential ingredient appears to be lacking, as the underlying transaction itself is shrouded in doubt. When the foundational claim of liability is uncertain or unsubstantiated, the possibility of false implication cannot be ruled out. Reliance is placed upon the case of ***Ali Anwar Paracha v. The State (2024 SCMR 1596)***, ***Syed Muhammad Ali Shah v. The State (2024 MLD 1363)***.

10. The alleged offence does not fall within the prohibitory clause of Section 497, Cr.P.C and the investigation has been completed. Furthermore, there is no

allegation or complaint that the applicant has misused the concession of interim pre-arrest bail. In these circumstances, the applicant is entitled to the concession of bail. It is pertinent to note that the offence under Section 489-F PPC, which provides a maximum punishment of three years, thereby not attracting the prohibitory clause of Section 497(1) Cr.P.C. It is a settled principle of law that when the offence does not fall within the prohibitory clause, the grant of bail is a rule and refusal is an exception. In cases involving the issuance of cheques, the Honourable Superior Courts have consistently extended the concession of bail. Reliance in this regard is placed upon the judgments rendered in ***Muhammad Nasir Shafique vs The State (2021 SCMR 2092)***, ***Bilal Iqbal vs The State (2025 MLD 373)***, ***Abdul Saboor vs The State (2022 SCMR 592)***, ***and Riaz Jafar Natiq vs Muhammad Nadeem Dar and others (2011 SCMR 1708)***, wherein bail was granted in similar circumstances.

11. In view of the above discussion, it is clear that the applicant/accused has succeeded in making out a case falling within the ambit of sub-section (2) of Section 497, Cr.P.C. The material available on record reflects that the case calls for further inquiry into the guilt of the applicant, therefore, the instant pre-arrest bail application is allowed and the interim bail already granted to the applicant/accused vide order dated 20-02-2025 is hereby confirmed on the same terms and conditions.

12. Needless to mention, the observations made herein above are purely tentative in nature, confined to the disposal of the present bail application, and shall not prejudice or influence the learned Trial Court in deciding the case on its merits.

JUDGE

Ihsan/PS.