

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr.B.A.No.S-271 of 2026

Applicant: Muhammad Tahir Saleem son of Saleem through Ms. Huma Sadiq, Advocate.

Complainant: Attaullah Khan through Mr. Ghulam Asghar Saryo.

State: Through Mr. Khalid Hussain Lakho, D.P.G.

Date of hearing: 08.06.2026

Date of decision: 08.06.2026

ORDER

TASNEEM SULTANA, J:- Through this Criminal Bail Application, the applicant Muhammad Tahir Saleem seeks post-arrest bail emanating from FIR No. 46 of 2026 registered at Police Station A-Section Latifabad, Hyderabad, for an offence punishable under Section 489-F P.P.C. The applicant's post-arrest bail application No. 48 of 2026 was dismissed by the learned Civil Judge & Judicial Magistrate-VII, Hyderabad, vide order dated 17.02.2026. Thereafter, the applicant filed Criminal Bail Application No. 436 of 2026, which too was dismissed by the learned Additional Sessions Judge - V, Hyderabad, vide order dated 26.02.2026; hence, the instant application for the same concession.

2. The brief facts of the prosecution case are that the complainant Ataullah Khan reported that he had invested Rs.12,000,000/- in Hale Pharmaceuticals owned by the applicant, against which the applicant issued two cheques bearing Nos. A-97905233 and A-97905234 for Rs.6,000,000/- each. One of the said cheques, upon presentation for encashment, was dishonoured on account of insufficient funds. It is alleged that despite demand, the applicant failed to honour his commitment, whereafter the instant FIR was registered, and the applicant was arrested in the present case.

3. Learned counsel for the applicant contends that the applicant is innocent and has falsely been implicated in the present case; that the

dispute between the applicant and the complainant admittedly arises out of a commercial distributorship arrangement; that the very cheques forming the basis of the prosecution case are specifically mentioned in Clause 21 of the Regional Distributor Agreement dated 01.10.2024 as guarantee cheques; that the complainant himself, in Summary Suit No.62 of 2026, has pleaded that cheque Nos. A-97905233 and A-97905234 were issued as guarantee; that the nature, purpose and enforceability of the alleged liability require recording of evidence and reconciliation of accounts; that civil litigation between the applicant and the complainant was already pending even prior to registration of the case; that the applicant had instituted F.C. Suit No.05 of 2025 regarding settlement of accounts and misuse of cheques; that the offence alleged does not fall within the prohibitory clause of Section 497, Cr.P.C.; that the applicant is behind bars and is no longer required for investigation; that the prosecution case calls for further inquiry within the meaning of Section 497(2), Cr.P.C.; and lastly prayed for grant of post-arrest bail.

4. Conversely, learned D.P.G. for the State, assisted by learned counsel for the complainant, opposes the application and contends that the applicant is specifically nominated in the case; that the disputed cheques belong to the applicant and were dishonoured due to insufficient funds; that the investigation has culminated in submission of challan and sufficient incriminating material is available on record connecting the applicant with the commission of the alleged offence; that the plea regarding security/guarantee cheques raises disputed questions of fact requiring trial and cannot be adjudicated upon at the bail stage; and lastly prayed for dismissal of the application.

5. I have heard learned counsel for the applicant, learned counsel for the complainant and learned D.P.G. for the State, and have perused the material available on record.

6. It appears from the record that the business relationship between the applicant and the complainant is not disputed. The record reflects that the parties entered into a Regional Distributor Agreement dated 01.10.2024, whereby the complainant was appointed as

Regional Distributor. Significantly, Clause 21 of the said agreement specifically mentions cheque Nos. A-97905233 and A-97905234, each amounting to Rs.6,000,000/-, and describes the same as guarantee cheques. Furthermore, the complainant, in Summary Suit No.62 of 2026 instituted for recovery of the same amount, has himself pleaded that the aforesaid cheques were issued as guarantee. Thus, the very nature and purpose of the disputed cheques become a matter requiring deeper appreciation of evidence.

7. It is also borne out from the record that prior to registration of the present case, civil proceedings had already been initiated between the applicant and the complainant concerning the same business transaction and settlement of accounts. The applicant had instituted F.C. Suit No.05 of 2025 seeking declaration, settlement of accounts and permanent injunction, whereas the complainant subsequently instituted Summary Suit No.62 of 2026 for recovery of Rs.12,000,000/-
8. The existence of such parallel civil proceedings, coupled with the contractual description of the disputed cheques as guarantee cheques, prima facie gives rise to a bona fide dispute regarding the nature of the underlying liability.

8. The Hon'ble Supreme Court in Muhammad Anwar v. The State & another (2024 SCMR 1657) observed that where a cheque is issued as guarantee/security, the question whether it was issued towards repayment of a loan or fulfillment of an obligation within the meaning of Section 489-F, P.P.C. is to be resolved by the trial Court after recording of evidence. Similar view was reiterated in Noman Khaliq v. The State & another (2023 SCMR 2122), wherein it was held that the issue whether a cheque was issued towards repayment of a loan or fulfillment of an obligation can only be determined after recording of evidence and, therefore, the case called for further inquiry. In the present matter, whether the disputed cheques were issued merely as security / guarantee instruments under the distributorship arrangement or were issued towards discharge of a legally enforceable obligation is a question which cannot be conclusively determined at

this stage and would require recording of evidence and adjudication by the trial Court.

9. The offence alleged under Section 489-F, P.P.C. carries a maximum punishment of three years and, therefore, does not fall within the prohibitory clause of Section 497, Cr.P.C. The settled principle is that in such cases, grant of bail is a rule and refusal an exception. Reliance may be placed upon *Shehzad v. The State* (2023 SCMR 679) and *Tariq Bashir and others v. The State* (PLD 1995 SC 34). The Hon'ble Supreme Court has repeatedly held that bail is neither punitive nor preventive, as punishment begins only after conviction. If a person is mistakenly granted bail, such error can be corrected upon conviction, whereas wrongful pre-trial detention, if ultimately found unjustified, causes irreparable harm to liberty. Reliance may also be placed upon *Nazir Ahmed alias Bharat v. The State and others* (2022 SCMR 1467), wherein it was observed that Section 489-F, P.P.C. is not a provision intended by the legislature to be used for recovery of an alleged amount and that civil proceedings provide remedies for recovery. The applicant is behind bars; investigation has been completed and challan has already been submitted before the trial Court. No exceptional circumstance has been pointed out which may justify the continued detention of the applicant.

10. In view of the above facts and circumstances, the case of the applicant appears to be one of further inquiry within the meaning of Section 497(2), Cr.P.C. Consequently, the instant bail application is allowed, and the applicant is admitted to post-arrest bail subject to furnishing solvent surety in the sum of Rs.50,000/- and P.R. bond in the like amount to the satisfaction of the learned trial Court.

11. The applicant shall attend the trial regularly and shall not misuse the concession of bail; any violation shall entail cancellation of bail in accordance with law.

12. The observations made herein are tentative in nature and shall not prejudice either party at the trial.

J U D G E