

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail. Application No.S-164 of 2026

[Zubair Ahmed Mirza versus The State]

Applicant: Zubair Ahmed Mirza (in person).
Complainant by: Syed Ali Abbas Zaidi advocate
State by: Mr. Altaf Hussain Khokhar, Deputy
Prosecutor General, Sindh.
Date of hearing 08.06.2026
Date of Order 08.06.2026

ORDER

TASNEEM SULTANA, J:– Through this Criminal Bail Application, the applicant Zubair Ahmed Mirza seeks pre-arrest bail in Crime No.24 of 2026 registered at Police Station Kotri for an offence punishable under Section 489-F PPC. His earlier Criminal Bail Application No.72 of 2026 having been dismissed by the learned Additional Sessions Judge-I/MCTC, Jamshoro vide order dated 28.01.2026, hence this application for the same concession.

2. The brief facts of the prosecution case are that complainant Mst. Romesa Shaikh alleged that the applicant/accused obtained an amount of Rs. 450,000 from her for business purposes and, after making partial repayment of Rs. 50,000, issued cheque No. 00151784 dated 05.11.2025 for an amount of Rs. 400,000. Upon presentation, the said cheque was dishonored on account of insufficient funds. Whereupon, an FIR was registered against the applicant/accused.

3. Learned applicant appearing in person submitted that he is innocent and has been implicated falsely; that the transaction was a business dealing with Waseem Ahmed and not with the complainant; that an Iqamma executed in the presence of Waseem Ahmed and Faiz Ahmed supports his position; and that whether the cheque was issued as loan repayment or to meet an obligation is a matter for the trial Court. He argued that the offence does not fall within Section 497 Cr.P.C.; therefore, he prayed for pre-arrest bail.

4. Conversely, learned Deputy Prosecutor General, assisted by learned counsel for the complainant, opposed the application; contending that the applicant is named in the FIR and the cheque belongs to him; that the cheque was issued to pay a liability and was dishonored due to insufficient funds; and that sufficient evidence connects the applicant to the offence. It was argued that the dispute regarding the nature of the transaction does not warrant grant of pre-arrest bail; therefore, prayed for dismissal.

5. I have heard the applicant appearing in person, learned Deputy Prosecutor General for the State assisted by learned counsel for the complainant, and have perused the available record with their able assistance.

6. It appears from the record that the cheque in question bearing No. 00151784 amounting to Rs. 400,000/- was allegedly issued in connection with a business transaction between the parties. The applicant's case is that his business arrangement was with Waseem Ahmed and not directly with the complainant. The record further reflects that an Iqamma was allegedly executed in the presence of Waseem Ahmed and Faiz Ahmed. The parties are at variance regarding the nature of the transaction, the extent of repayment and the existence of any subsisting liability. In these circumstances, a bona fide controversy exists regarding the essential ingredients of Section 489-F PPC. The prosecution must establish that the cheque was issued towards discharge of a debt or liability owed by the applicant to the complainant. The identity of the actual contracting parties, the nature of the transaction, and whether a legal obligation existed requiring the issuance of the cheque are all factual questions that cannot be conclusively determined at the bail stage and require evidence. Consequently, the matter calls for further inquiry within the meaning of Section 497(2), Cr.P.C.

7. Furthermore, the offence under Section 489-F PPC carries maximum punishment of three years and does not fall within the prohibitory clause of Section 497 Cr.P.C. The settled principle of law is that in offences not falling within the prohibitory clause, grant of bail is a rule and refusal is an exception. Reliance in this regard may beneficially be placed upon the case of Abdul Rasheed v. The State (2023 SCMR 1948), wherein the Hon'ble

Supreme Court observed as under:

“Even otherwise, even if the complainant wants to recover his money, Section 489-F of PPC is not a provision which is intended by the Legislature to be used for recovery of an alleged amount. In view of the above, the question whether the cheques were issued towards repayment of the loan or fulfilment of an obligation within the meaning of Section 489-F PPC is a question, which would be resolved by the learned Trial Court after recording of evidence. The maximum punishment provided under the statute for the offence under Section 489-F PPC is three years and the same does not fall within the prohibitory clause of Section 497 Cr.P.C. It is settled law that grant of bail in offences not falling within the prohibitory clause is a rule and refusal is an exception.”

8. Similarly, in the case of Abdul Saboor v. The State through A.G. KPK & another (2022 SCMR 592), the Hon’ble Supreme Court of Pakistan observed that the offence under Section 489-F PPC does not fall within the prohibitory clause of Section 497 Cr.P.C. and that since the maximum sentence provided under Section 489-F PPC is three years, bail should generally be granted rather than refused. The Hon’ble Supreme Court further emphasized that Section 489-F PPC is not intended to serve as a tool for monetary recovery, which is the domain of civil litigation under Order XXXVII of the Civil Procedure Code.

9. In view of the above facts and circumstances, the applicant has made out a case for the grant of pre-arrest bail. Consequently, the instant pre-arrest bail application is allowed and the interim pre-arrest bail granted to the applicant vide order dated 04.02.2026 is hereby confirmed on the same terms and conditions.

10. The observations made herein are tentative in nature and shall not influence the learned trial Court while deciding the case on merits.

11. These are the reasons of my order dated 08.06.2026.

JUDGE