

## IN THE HIGH COURT OF SINDH AT KARACHI

### Criminal Bail Application No.2849/2024

Applicant : Muhammad Rofi Siddiq son of Muhammad Siddiq  
through Mr. Mallag Assa Dashti, Advocate

Respondent : The State  
through Ms. Rahat Ehsan, Addl. P. G. Sindh  
assisted by Mr. Muhammad Zareef Lakho advocate  
for complainant.

Date of hearing : 22.04.2025

Date of order : 28.04.2025

### **ORDER**

**KHALID HUSSAIN SHAHANI, J.** – Applicant Muhammad Rofi Siddiq, seeks pre-arrest bail in a case bearing Crime No. 432/2024, offence under section 489-F PPC of Police Station Al-Falah Korangi Karachi. Earlier bail plea of applicant was declined by the learned Additional Sessions Judge Karachi East vide order dated: 03.12.2024.

2. According to prosecution theory, Muhammad Umair, entrusted a sum of Rs. 7.5 million to the accused, Rofi Siddiq (son of Muhammad Siddiq), for business purposes. The accused had assured the complainant that he would either utilize the amount to purchase a piece of land on his behalf or return the same. To discharge the purported liability, the accused issued a cheque bearing No. 11749584, drawn on Account No. 103809810110101 maintained at Bank Al-Habib, Saddar Branch, Karachi. The cheque, amounting to Rs. 1.5 million, dated 25.07.2023, was subsequently presented for encashment but was dishonoured upon presentation on 06-10-2023. Consequently upon; case was registered inter alia on above facts.

3. Learned counsel contended that applicant has been falsely implicated due to mala fide intentions and ulterior motives. It was submitted that there is an unexplained delay of over 46 days in the registration of the FIR, which raises doubts about the veracity of the complaint. The learned counsel further argued that there exists no written agreement or documentary evidence to demonstrate that the complainant had advanced any amount or that the accused was under any legal obligation to repay the alleged sum. The assertion regarding the promise

to purchase land or return the funds, it was argued, is vague and unsupported by any credible proof. It was also pointed out that the accused only became aware of the FIR when he discovered that his CNIC had been blocked, upon inquiry from NADRA, who informed him that the same was done on the basis of court orders in connection with the present case. It was emphasized that the entire prosecution case hinges upon the complainant's statement, which remains untested and subject to contradiction during trial. Learned counsel concluded that the accused deserves the concession of bail in view of the doubtful nature of allegations and the absence of cogent evidence at this stage. Learned advocate for accused relied upon the case law cited at 2024 SCMR 1567, 2023 SCMR 748, 2022 MLD 1444, 2023 P.Cr.L.J Note 553.

4. Learned APG duly assisted by learned advocate for complainant opposed the bail plea, contending that a cognizable offence has been made out against the accused, who issued a cheque in satisfaction of a financial obligation that was dishonoured upon presentation. It was submitted that the issuance of a cheque itself constitutes prima facie evidence of liability and the dishonour attracts penal consequences under Section 489-F PPC. The learned APG emphasized that the matter requires trial, where the veracity of the parties' claims can be determined. The complainant's counsel aligned with the State's stance and submitted that the complainant parted with a substantial amount of Rs. 7.5 million in good faith for a business transaction with the accused. The issuance and subsequent dishonour of the cheque clearly reflect the accused's dishonest intent. It was urged that the bail be declined as the accused seeks to evade responsibility by raising technical objections and denying a legitimate monetary transaction, despite documentary proof in the form of a cheque.

5. Record reflects that the complainant made allegations that accused received Rs. 7.5 million from complainant under a promise to purchase land or return the amount, and to that effect issued a cheque of Rs. 1.5 million which was dishonoured. As such there is no agreement or any written promise to that effect to safely held that the complainant's version is prima facie connecting the applicant with a dishonest repayment of an obligation. To attract the mischief of Section 489-F PPC, three foundational elements must be established: first, that a cheque was issued by the accused; second, that it was issued *dishonestly* for the purpose of

repaying a loan or fulfilling an existing legal obligation; and third, that the said cheque was dishonoured upon presentation. While the dishonour of the cheque is an admitted fact in the present case, there remains a critical omission in respect of the first two requirements. The prosecution has not produced any written agreement, receipt, or contractual instrument to show that the accused received a loan or was under any legal obligation to repay the alleged amount of Rs. 7.5 million. Without such evidence, the court is left with a mere allegation unsupported by documentation, making it uncertain whether the cheque was in fact issued against the repayment of a loan or towards the discharge of any obligation. In this context, the absence of any agreement executed between the parties severely undermines the prosecution's ability to establish that the cheque was issued with dishonest intent for satisfaction of a legally enforceable debt, thus failing to satisfy the essential ingredients required to constitute an offence under Section 489-F PPC. Thus in such circumstances, the exaggeration of facts and false implication cannot be ruled out.

6. The matter calls for deeper scrutiny during trial. However, at this stage, the court must balance the allegations with the defense plea of further inquiry and potential misuse of process. Furthermore, it is the consistent view of superior courts, including in *Mian Allah Ditta v. The State* (2013 SCMR 51) and *PLD 2012 Sindh 464 (Malik Safdar Ali)*, that in order to attract Section 489-F PPC, the prosecution must prima facie establish that the dishonoured cheque was issued with dishonest intent, and in discharge of an existing loan or obligation.

7. The Supreme Court in *Abdul Saboor v. The State* (2022 SCMR 592) and *Noman Khaliq v. The State* (2023 SCMR 2122) has categorically held that Section 489-F is not a recovery mechanism, and where foundational ingredients of the offence are lacking or the matter involves factual disputes regarding liability, bail ought to be granted as further inquiry is required. Likewise, in *Mazhar Iqbal v. The State* (2006 YLR 406), bail was confirmed where dishonesty was not prima facie established.

8. In any case, the delayed FIR, the civil nature of the dispute, the absence of direct attribution of the dishonoured cheques to the applicant, and the non-prohibitory clause nature of the offence cumulatively render the case one of further inquiry. These principles have also been echoed in *Muhammad Iqbal v. The State* (2018 YLR Note 157) and *Muhammad*

*Ashraf v. The State* (2021 PCrLJ 586), wherein bail was granted where key ingredients under Section 489-F PPC were either doubtful or lacking.

9. Accordingly, the applicant has made out a case warranting confirmation of interim pre-arrest bail. The interim pre-arrest bail granted to the applicant, vide order dated 05-12-2024 is hereby confirmed on the same terms and conditions. Needless to mention, the observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

**JUDGE**