

## IN THE HIGH COURT OF SINDH AT KARACHI

### Criminal Bail Application No.112 of 2025

Applicant : Fabian Cr Francis S/o Francis Rober  
through M/s. Shah Ali Qambrani &  
Zahida Abdul Sattar, Advocates

Complainant : Clifford Fernandes S/o Philip Fernandes  
through Mr. Mirza Shaharyar Baig,  
Advocate

Respondent : The State  
Through Ms. Rahat Ahsan, Addl. P.G.,  
Sindh a/w SIP Muhammad Anwar and  
I.O. SIP Muhammad Yaqoob

Date of hearing : 31.01.2025

Date of order : 31.01.2025

### **ORDER**

**AMJAD ALI SAHITO, J** -- Through this Bail Application, applicant/accused seeks pre-arrest bail in Crime No.228/2024 for the offence under Section 489-F PPC registered at PS Artillery Maidan, after his bail plea has been declined by the learned Vth Additional Sessions Judge, Karachi South vide order dated 10.01.2025.

2. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

3. Learned counsel for the applicant requests for condonation of absence of applicant on the ground that he is out of station. His request is allowed. However, he is directed to proceed with the matter. Accordingly, he has read over the FIR. He argues that in fact the cheques were not issued by the applicant but some other person has given the same to the complainant, otherwise he has not committed any offence. He lastly prays for confirmation of bail.

4. On the other hand, Mr. Mirza Shaharyar Baig, Advocate files Vakalatnama alongwith certain documents, which is taken on record. Complainant present in person submits that cheques were issued in his favour and as such, he deposited the same in his

account which were dishonoured with endorsement that 'Account is closed'. Both learned counsel for the complainant and learned Addl. P.G. have opposed for confirmation of bail to the applicant.

5. Heard arguments and perused the record.

6. From perusal of record, it reflects that the applicant had given two cheques to the complainant in lieu of payment of loan; however, when these cheques were presented by the complainant in his account, the same became dishonoured with endorsement that the 'Account is closed'. Hence, the ingredients of Section 489-F PPC are very much applicable in this case. Further, the applicant knowingly issued the said cheques that his Account is already closed; as such, he has also committed offence of cheating and fraud with the complainant. The applicant has also not denied issuance of his cheque as well as from his signature. At bail stage, only tentative assessment is to be made. No malafide or ill-will or enmity has been pleaded by the applicant/accused, which could be the ground for false implication in this case.

7. Further, the concession of pre-arrest bail cannot be allowed to an accused person unless the Court feels satisfied with the seriousness of the accused person's assertion regarding his intended arrest being actuated by *mala fide* on the part of the complainant party or the local police but not a word about this crucial aspect of the matter is found as no *mala fide* is made on the part of the complainant to believe that the applicant/accused has been implicated in this case falsely. In this context, the reliance is placed to the case of **'Rana Abdul Khaliq v. The STATE and others'** [2019 SCMR 1129]. In addition to the above, I would like to mention that grant of pre-arrest bail is an extraordinary remedy in criminal jurisdiction; it is a diversion of the usual course of law, arrest in cognizable cases; protection to the innocent being hounded on trump up charges through abuse of process of law, therefore, an applicant seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of *mala fide*, it is not a substitute for post-arrest bail in every run of the mill criminal case as it seriously hampers the course of the investigation.

8. In view of the above, the instant bail application is **dismissed**. Resultantly, the interim pre-arrest bail granted to the applicant/accused vide order dated 14.01.2025 is hereby recalled.

9. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant/accused on merits.

JUDGE

Kamran/PA