

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application Nos. 87 & 293 of 2025

Applicant : Jawad Ali son of Khalid Mehmod
Through Shamail Sikander, learned advocate

Respondent : The State
through M/s Aftab Ahmed and Jahangir Khan,
advocates for the complainant in both Cr. Bail
applications.

Ms. Seema Zaidi, Additional P.G Sindh along
with SIP Arif Ahmed of PS Tipu Sultan.

Date of hearing : 08.04.2025

Date of order : 15.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – These consolidated post-arrest bail applications, arising from FIR No. 330/2024 offence u/s 489-F, 406 & 34 PPC of Police Station Tipu Sultan, Karachi, and FIR No. 230/2024 offence u/s 489-F PPC of Police Station Bahadurabad, Karachi, are being disposed of through this single order. It may be noted that the bail plea arising from FIR No. 330/2024 was previously declined by the learned Vth Additional Sessions Judge, Karachi South, whereas the bail application pertaining to FIR No. 230/2024 was dismissed by the learned Additional Sessions Judge-I, Karachi East.

2. Facts arising out of from both the FIRs are that the complainant Muhammad Waseem lodged two separate FIRs at two separate police stations on the basis that applicant and his father Khalid Mehmood were in business deal of purchase oil & Ghee from their company, as they run the company under the name and style J.S Traders and the cheque involved in FIR No.330/2024 was of Rs.120,000,000/- and a cheque involved in FIR No.230/2024 was of Rs.12,36,30,110.49/-. As such both these cheques on presentation were dishonored.

3. Learned advocate for applicant reiterated the same grounds in both bail applications and further contended that; the applicant is innocent and has been falsely implicated in a criminal case arising out of a commercial transaction. It is submitted that the cheque in question (No.1809755026) was a blank security cheque issued in 2021 to M/s. Unity Foods in the ordinary course of business. The complainant, instead of returning the

cheque upon termination of business relations vide letter dated 17.03.2022, allegedly filled in the particulars, dated it 19.07.2024, and presented it for encashment in 2024, whereupon it was dishonoured. It is argued that numerous other cheques from the same cheque book were issued and honoured in 2021–2024, confirming the commercial nature of the dealings. The acknowledgment of the blank cheque's receipt by M/s. Unity Foods' National Sales Operations Manager on 02.08.2021 supports the defence version, yet the Investigating Officer has not recorded his statement. It is further submitted that the case is based entirely on documentary evidence and does not fall within the prohibitory clause of Section 497 Cr.P.C. The applicant, aged 25 years and recently joined in his family's business, is no longer required for investigation. His continued detention serves no useful purpose and may adversely affect his future. Reliance is placed on 2024 SCMR 2066, wherein the Hon'ble Supreme Court held that where the element of dishonest intention in issuing a cheque is doubtful, and the cheque appears to be given as security, the case would fall within the ambit of further inquiry under Section 497(2) CrPC. It is also argued that the FIR is lodged through an attorney, which is not permissible in such offences, and that the criminal process is being misused to effectuate recovery in a commercial dispute. He further relied upon the case law cited at 2023 YLR 524, 2019 MLD 636, 2013 SCMR 51, order dated: 28.09.2023 in Cr. Bail Application No.1762, order dated: 19.07.2024 in Criminal Bail Application N.986/2024, Cr. PLA No.340/2024, order dated: 11.12.2023 in Cr. Bail Application No.2623/2023, PLD 2012 Sindh 464, 2023 SCMR 1948, Writ Petition NO.3103/2023 (LHC), Cr. Petition No.294-L of 2023.

4. Conversely, learned APG for the State duly supported by learned advocate for complainant vehemently opposed the bail application and contended that the applicant has committed the offence of dishonestly issuing a cheque which, upon presentation, was dishonoured due to insufficient funds, thereby attracting the mischief of Section 489-F PPC. The defence plea that the cheque in question was a blank security instrument issued in 2021 is an afterthought and lacks any cogent documentary evidence to establish such claim. It is emphasized that the cheque bears a specific date, i.e., 19.07.2024, and is drawn in favour of the complainant company, raising a presumption under Article 129 of the Qanun-e-Shahadat Order, 1984, in favour of the holder of the cheque. The learned counsel submits that the allegation of the complainant having filled in the date and particulars on the cheque unilaterally is not only

unsubstantiated but also legally immaterial, as even a blank cheque voluntarily handed over becomes a negotiable instrument under settled jurisprudence. The issuance of a dishonoured cheque constitutes a complete offence once the cheque is presented and returned unpaid due to insufficiency of funds, regardless of the alleged underlying arrangements. It is further argued that the applicant has admitted the issuance of the cheque and the fact of dishonour is not in dispute. As such, prima facie ingredients of the offence under Section 489-F PPC are fully satisfied. The contention that the cheque was a guarantee instrument is a factual defence that requires evidence and cannot be determined at the bail stage. Moreover, it is emphasized that mere business relations between the parties and the issuance of other cheques from the same cheque book cannot exonerate the applicant from the consequences of issuing a cheque which was later dishonoured. The complainant's right to pursue a criminal remedy under Section 489-F PPC stands independent of any civil claim and is not barred merely on the ground that other cheques may have been honoured. The learned APG submits that the investigation is ongoing and the applicant's assertions, including those regarding the acknowledgment allegedly made by the representative of Unity Foods, require thorough verification. It is further submitted that the alleged letter dated 17.03.2022 by which the applicant sought return of the cheques is a self-serving document, produced after a considerable delay and lacks verification by the complainant. The learned counsel for the complainant also contends that registration of FIR by an attorney does not render the proceedings illegal, particularly where the offence is cognizable, and the principal complainant has duly authorized the attorney to act on his behalf. Lastly, it is contended that the offence under Section 489-F PPC carries punishment of up to three years and is non-bailable in nature. The conduct of the applicant and the manner in which the cheque was dishonoured reflect dishonest intention, which disentitles him from the concession of bail. The alleged misuse of criminal law is a matter of trial and not a ground for pre-trial release. Learned advocate for complainant relied upon the case laws cited at 2024 Cr.L.J 30, 2024 SCMR 1719, 2023 YLR Note 33, 2021 Cr.L.J 886, 2013 Cr.L.J 1361, 2011 Cr.L.J 774, 2011 Cr.L.J 754, 2011 MLD 793, 2011 Cr.L.J 747, 2011 MLD 1465.

5. From the overall conspectus of the record and rival arguments advanced, it transpires that the cheque leaves bearing Nos. 1809755026 and 1809755027, form part of a long-standing business relationship between the applicant and the complainant. The issuance of a series of cheques reflected in the counter-foils of cheque books from 2021 to 2024,

including cheques with subsequent serial numbers, prima facie indicates that the cheques in dispute were issued as a matter of course or by way of security rather than in discharge of an immediate enforceable liability. All the other rest of cheques were cleared/encashed by the complainant except someone. Furthermore, the registration of two FIRs on cheques of the same series in two different police jurisdictions is a circumstance that casts doubt on the bona fides of the complainant and suggests a possible misuse of criminal law to settle a commercial score. The existence of admitted commercial transactions between the parties is not denied, which further takes the case into the realm of civil dispute requiring adjudication through appropriate forum.

6. The practice of lodging successive FIRs in respect of dishonoured cheques arising out of the same business transaction has been strongly deprecated by this Court in the case of **Sheikh Rehan Ahmed v. Judicial Magistrate-II, South, Karachi & others** reported as **2019 MLD 636**, wherein it was held:

"It becomes a regular practice that multiple post-dated cheques are obtained regarding some monetary obligations and after getting the same dishonoured by depositing in different bank branches, criminal cases are initiated one after another... the person who has issued the cheques is forced to enter into compromise on the conditions, which are sometimes unbearable for him... the practice of using the provision of Section 489-F by some of the businessmen as the tool of recovery should be put an end. If it is proved that at the time of lodging of earlier FIR, the complainant was already having a bounced cheque of the same party and he avoided to lodge FIR with intention to use it at some future stage as a tool of recovery, then subsequent FIR should not be allowed and if the subsequent FIR is lodged then it is the duty of the concerned Judicial Magistrate to nip the evil in the bud by using the provision of Section 63, Cr.PC."

7. In the present case, the complainant was admittedly in possession of the bounced cheque at the time of lodging of subsequent FIR, yet deliberately chose not to include the same, which reflects ulterior motives behind filing of the subsequent FIR. The cheque in question appears to have been used as a *tool of coercion* to pressurize the applicant into fulfilling allegedly inflated or unrelated liabilities.

8. Section 489-F PPC provides:
"Whoever dishonestly issues a cheque towards repayment of a loan or fulfillment of an obligation which is dishonoured on presentation, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

The essential ingredients of Section 489-F PPC are:

- (i) issuance of cheque;
- (ii) the cheque must be towards repayment of a loan or discharge of obligation;
- (iii) dishonour of the cheque;
- (iv) the issuance must be dishonest.

9. In the instant case, the above ingredients are not prima facie satisfied. There is serious doubt regarding the *obligation* as no direct agreement is shown to exist between the complainant and the applicant. Rather, the agreement and the cheque pertain to business dealings among other individuals or entities. Moreover, the question whether the cheque was issued *dishonestly* cannot be determined at this stage, especially when partial payments of Rs.95 Lacs have been made and it is not being refuted or controverted by the learned APG for the State or complainant.

10. The maximum punishment for an offence under Section 489-F PPC is **three years**. This sentence is neither capital nor falls within prohibitory clause of Section 497 CrPC. It is well settled that bail cannot be withheld as a means to recover monetary dues. In this respect, reliance may be placed on the case of **Muhammad Afzal v. The State and others** reported as **2012 YLR 2780**, wherein it was held:

"The provisions of section 489-F, P.P.C. have not been promulgated for using it as a tool for recovery of the amounts due in business dealings for which the civil remedy has already been provided by law."

11. It is frequently noticed that in bail applications under Section 489-F PPC, opposition is raised merely on the ground that large amounts are involved and need to be recovered. However, no such practice can be encouraged by the courts or the investigating agency to misuse the criminal process as an instrument of recovery. The object of criminal law is not to enforce private debts or contracts, but to penalize dishonest acts that attract criminal culpability.

12. In case of Muhammad Anwar Vs. The State & another (2024 SCMR 1657) the Honorable Supreme Court held:

"Primarily, the agreement in question is executed between Petitioner and Muhammad Attique regarding the plot. The perusal of said agreement indicates that the cheque in question was issued as Guarantee from the petitioner to Muhammad Attique. The complainant has failed to produce any receipt issued by the petitioner while receiving cash amount of 2,00,000/-. The tentative assessment of the record shows that it is not toward the fulfillment of any obligation but rather it was given as security. Prima facie, it does not attract the elements of section 489-F, P.P.C."

"8. This Court has held in the case titled Mian Allah Ditta, that every transaction where a cheque is dishonoured may not constitute an offense. The foundational elements to constitute an offense under this provision are the issuance of the cheque with dishonest intent, the

cheque should be towards repayment of loan or fulfillment of an obligation, and lastly that the cheque is dishonoured.

9. Furthermore, this Court in the case of Abdul Rasheed, has ruled as follows:

Even otherwise, even if the complainant wants to recover his money, Section 489-F of P.P.C. 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 loan or fulfillment of an obligation within the meaning of Section 489-F, P.P.C. 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, P.P.C. 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 the offences not falling within the prohibitory clause is a rule and refusal is an exception.”

13. In case of *Mian Allah Ditta Vs. The State & others* (2013 SCMR 51) the Honorable Supreme Court of Pakistan was pleased to confirm pre-arrest bail to the accused who had issued a cheque that was later dishonoured. The Court found that the cheque was given as security in connection with an arbitration agreement, not in repayment of a loan or existing obligation. It held that Section 489-F PPC only applies where a cheque is issued dishonestly to repay a loan or fulfill an obligation, and then dishonoured. Since this foundational requirement was prima facie missing, the offence was not made out. The matter appeared to be civil in nature, and criminal proceedings were not justified.

14. In *Abdul Saboor Vs. The State through A.G KPK & another* (2022 SCMR 592), the Honorable Supreme Court observed that the accused Abdul Saboor was charged under Section 489-F PPC for allegedly issuing a dishonoured cheque of Rs. 10 million to settle a business-related debt. He remained in custody for over six and a half months. The Supreme Court held that since the offence did not fall within the prohibitory clause of Section 497 CrPC and the maximum sentence under Section 489-F PPC was three years, bail should generally be granted rather than refused. The Court 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. It reiterated that bail is the rule and refusal an exception in non-prohibitory offences, citing *PLD 2017 SC 733* (Muhammad Tanveer case). Observing that the allegations involved factual controversies to be determined at trial and that further inquiry was warranted under Section 497(2) CrPC, the Court allowed the petition, converted it into an appeal, and granted bail. The judgment reinforced the principle that liberty should not be curtailed without compelling justification, particularly in bailable offences.

15. In case of *Noman Khaliq Vs. The State & another* (2023 SCMR 2122), the Honorable Supreme Court was pleased to consider a case involving a dishonoured cheque arising out of a business relationship. The Court emphasized that Section 489-F PPC is not intended to be used as a mechanism for monetary recovery, particularly where the dispute stems from commercial or business dealings. Instead, civil remedies such as a suit under Order XXXVII of the Code of Civil Procedure are the appropriate avenue for seeking recovery of such amounts. The Court observed that the core issue, whether the cheque was issued towards the repayment of a loan or fulfillment of a legal obligation, could only be determined by the Trial Court after recording of evidence, and as such, the case called for further inquiry under Section 497(2) CrPC. It was further held that since the maximum sentence under Section 489-F PPC is three years, which does not attract the prohibitory clause of Section 497 Cr.P.C., grant of bail is the rule and refusal is an exception. The Court reiterated that absconsion alone is not sufficient to deny bail and does not amount to proof of guilt. In granting bail, the Court relied on its earlier judgment in *Abdul Saboor v. The State* (2022 SCMR 592), and reaffirmed that criminal prosecution under Section 489-F PPC cannot substitute civil proceedings, especially where the dispute is of a contractual or financial nature arising out of mutual business dealings.

16. In case of *Malik Safdar Ali v. Syed Khalid Ali* (PLD 2012 Sindh 464), this Court examined the essential ingredients required to constitute an offence under Section 489-F PPC, which pertains to the dishonouring of cheques. The Court emphasized that the mere fact of a cheque being dishonoured by a bank is not enough to attract penal liability under this section. It must be established by the prosecution that the cheque was issued in respect of an existing legal obligation or liability, typically arising from a business transaction or financial arrangement. Furthermore, the element of dishonesty and the intention to defraud (*mens rea*) are indispensable to establish the offence. The Court clarified that if a cheque is issued only as a security or as a conditional instrument without a present, enforceable liability, its dishonour does not constitute an offence under Section 489-F PPC. In this case, since the prosecution failed to prove the existence of a valid underlying transaction and intent to defraud, the High Court dismissed the appeal against acquittal, holding that the necessary elements of the offence were not satisfied. This judgment reinforces that Section 489-F PPC is not a tool for recovery of money, and its application must be restricted to genuine cases of dishonest issuance of cheques in discharge of real obligations.

17. In *Mazhar Iqbal v. The State* (2006 YLR 406 [Lahore]: the petitioner, sought confirmation of pre-arrest bail in an FIR registered under Section 489-F PPC for allegedly issuing a dishonoured cheque of Rs. 50,000 to the complainant, Zafar Iqbal. The petitioner argued that the cheque was given during the course of mutual business dealings involving second-hand car transactions and that the underlying amount had already been repaid. He further demonstrated good faith by depositing the cheque amount with the police. It was further held, Section 489-F PPC requires the presence of *mens rea*, i.e., an element of dishonesty, for criminal liability to attach. Mere dishonour of a cheque does not automatically attract penal consequences unless it is proven that the cheque was issued dishonestly or to deceive. Since the payment had already been made, and the cheque was not meant for encashment, the Court found no apparent dishonest intent. Considering that the offence is punishable with a maximum of three years and does not fall within the prohibitory clause of Section 497 Cr.P.C., the Court emphasized that bail in such cases is a rule, while refusal is an exception. The case was considered to involve further inquiry under Section 497(II) Cr.P.C. Accordingly, the petitioner's pre-arrest bail was confirmed, and the Court directed the Magistrate to invest the deposited amount in a government profit scheme, with the eventual entitled party receiving the principal and profits. This case reiterates the principle that criminal liability under Section 489-F PPC requires proof of dishonest intent and is not attracted by mere cheque dishonour in the context of settled business transactions.

18. In case of *Muhammad Ashraf v. The State* (2021 P Cr. L J 586 [Balochistan]), the accused was alleged to have issued a cheque that was dishonoured on presentation. The complainant claimed the cheque had been issued in satisfaction of a financial liability. However, the Court closely examined the legal requirements of Section 489-F PPC and laid down important principles. The Court held that mere dishonouring of a cheque is not sufficient to constitute an offence under Section 489-F PPC. The prosecution is duty-bound to establish two essential elements:

1. That the cheque was issued in discharge of a legally enforceable obligation, and
2. That it was issued with dishonest intent (*mens rea*).

This judgment reinforces that Section 489-F PPC is not triggered automatically upon cheque dishonour; the prosecution must prove the context and intent behind the issuance of the cheque. Without evidence of a binding obligation or deceitful conduct, criminal liability does not arise.

19. I have also carefully examined the case law cited by the learned counsel for the complainant. It is respectfully acknowledged the cited judgments enunciate sound and well-established legal principles; it is equally evident that the ratio decidendi therein does not squarely apply to the peculiar facts and circumstances of the present case. The factual matrix, legal context, and evidentiary posture in the instant matter are distinguishable, thereby rendering the cited precedents inapposite for determining the present bail application.

20. In such circumstances, and in light of the authoritative pronouncements of the Hon'ble August Courts it is consistently held that mere dishonour of a cheque is not sufficient to attract Section 489-F PPC unless accompanied by a clear demonstration of dishonest intent and the existence of an enforceable obligation, a cheque issued merely as security, without cogent evidence of mens rea, cannot sustain criminal liability. Where the dispute stems from a business transaction, the matter calls for deeper inquiry, not pre-trial incarceration. Additionally, the registration of multiple FIRs in commercial disputes as an abuse of process, particularly when used to exert coercive pressure, make the case of prosecution as of further inquiry, as contemplated under sub-section(2) of section 497 Cr.P.C.

21. Given the above, prima-facie applicant has succeeded to make out case for concession of bail, not as a matter of grace but of right, in line with the settled principles that govern bail in non-prohibitory offences rooted in commercial dealings. Bail is accordingly granted on furnishing solvent surety in sum of Rs.2 million in each case, with P.R Bond of like amount to the satisfaction of learned trial Court.

J U D G E