

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Bail Application No.1048 of 2025

Applicant : Hassan son of Abdul Hameed,  
through Mr. Farrukh Usman, Advocate

Respondent : The State  
Through Ms. Rahat Ehsan, Addl. P.G Sindh  
duly assisted by Mr. Tahir Mehmood, advocate  
for the complainant.

Date of hearing : 22.05.2025

Date of order : 29.05.2025

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.** – Applicant Hassan seeks post-arrest bail in a case bearing crime No.624/2024, offence under Section 489-F PPC registered at Police Station Orangi Town, Karachi. His previous bail was declined by the learned XVIIIth Judicial Magistrate Judge Karachi (West) vide order dated 28.12.2024, and later on by the XIIth Additional Sessions Judge, Karachi (West) vide order dated 20.01.2025.

2. The genesis of the facts, as narrated by the complainant are that he had entered into a business arrangement with the applicant. According to the complainant, in May 2024, he provided an amount of Rs. 3,000,000/- to the applicant for the purpose of an electronics business. For a brief period, the complainant received profit for one month. Subsequently, in June 2024, an additional sum of Rs.2,000,000/- was advanced to the applicant, bringing the total amount to Rs.5,000,000/-. The complainant alleges that thereafter, the applicant neither provided further profit nor returned the principal amount. The cumulative sum payable, including the alleged profit, escalated to Rs.7,000,000/-. Upon the complainant's repeated demands for payment, the applicant is stated to have issued two cheques. These cheques bear No. 10299486 for Rs.3,000,000/- and No. 10299488 for Rs.4,000,000/-, both drawn on Bank Al-Habib Limited. The complainant subsequently deposited these cheques into his account at Meezan Bank Limited, Shahrah-e-Orangi branch. However, both cheques were returned by the bank with the reason "insufficient funds." Following the dishonor of the cheques, the complainant claims to have approached the applicant for the claimed amount, but he allegedly refused to return the money and even threatened him with dire consequences, leading to the lodgment of the present FIR seeking legal action.

3. The learned counsel fervently argued that the applicant is innocent and has been falsely implicated in this case. The core of the applicant's defense revolved around several crucial points. Firstly, it was submitted that the complainant had deliberately relied upon a "fabricated and altered agreement" lacking legal validity, suggesting a malicious intent to falsely implead the applicant. Secondly, the counsel contended that the business relationship between the parties involved the applicant providing "blank cheques" to the complainant, which were subsequently misused. This, it was argued, is why the complainant purportedly failed to substantiate the actual liability or proof of payment against which the cheques were issued. Furthermore, without prejudice to the above, the applicant's counsel asserted that the story narrated in the FIR was contrary to other established facts. The applicant claimed to have paid almost the entire amount received from the complainant, partly through bank accounts (though full statements were inaccessible due to his custody) and significantly through mobile accounts and another account in MCB Bank Limited. The counsel alleged collusion on the part of the Investigation Officer for failing to obtain these crucial bank records, proving malice. Serious allegations were also leveled regarding the conduct of the complainant's sister, Ms. Aiman Maroof, a practicing advocate. It was contended that she unduly influenced the police to lodge the FIR and investigate the matter within the jurisdiction of Orangi Town P.S., despite the alleged cause of action accruing in Mominabad P.S. Moreover, the applicant claimed to have been "mercilessly beaten up" by Ms. Maroof and her associates during police remand, asserting that an unprecedented four remands were granted to the police in a case under Section 489-F PPC. An application against the applicant's counsel before the Trial Court was also cited as evidence of Ms. Maroof's attempts to deprive the accused of his fundamental right to a fair trial. A significant legal point raised by the applicant's counsel pertained to the alleged "inordinate and unexplained delay of about five months" in lodging the FIR, as the cheques were purportedly presented in June 2024, while the FIR was registered in November 2024. This delay, it was argued, is fatal to the complainant's case and entitles the applicant to the benefit thereof. It was also argued that the complainant himself filled up the blank cheques, and the core ingredients of Section 489-F, specifically any loan or obligation, had not been substantiated. Crucially, the counsel highlighted that the offence under Section 489-F PPC does not fall within the prohibitory clause of Section 497 Cr.P.C. Citing various judgments, including PLD 1995 SC 34 and 2024 SCMR 1596, it was asserted that in non-bailable offences not

falling within the prohibitory clause, the grant of bail is a rule and refusal an exception. The prolonged incarceration of the applicant for about five months without the commencement of trial and framing of charge was also presented as a factor warranting bail. The applicant, it was emphasized, is not a hardened criminal, nor an absconder, and being a permanent resident of Karachi, there is no probability of him fleeing justice or tampering with witnesses.

4. The learned advocate for the complainant vehemently opposed the bail application, submitting detailed written arguments and raising several objections. The complainant's counsel first challenged the very character of the applicant, labeling him a "habitual criminal" with a "pure criminal intention" to defraud innocent individuals through fraudulent business transactions. It was asserted that the applicant had not approached the court with clean hands and had intentionally misrepresented facts to mislead the Court. Regarding the alleged delay in the FIR, the complainant's counsel firmly refuted this claim, asserting that the cheques were indeed deposited and bounced in November 2024, and the FIR was lodged in the same month. To substantiate this, certified copies of the cheques and bounce memos (Annexure H and H-1 of the bail application) were referred to, clearly indicating November 2024. Furthermore, the complainant presented WhatsApp chat history (Annexure P-5) and audio/video recordings (Annexure P-6) from November 15, 2024, (just one day prior to the FIR lodgment), wherein the applicant himself purportedly accepted his liability, thus demonstrating that the complainant had been actively pursuing payment before resorting to legal action. The serious allegations made against Ms. Aiman Maroof were categorically denied and condemned as "baseless defamation" without any substantiating evidence. It was pointed out that no formal complaint of maltreatment, request for medical examination, or application regarding alleged jurisdictional manipulation had ever been filed by the applicant in the trial court, casting significant doubt on these claims. It was even highlighted that the applicant himself initially preferred police custody to "talk to his family." A cornerstone of the complainant's opposition was the applicant's "miserable failure" to prove his plea of "security cheques." The burden of proving such a claim, it was argued, rests squarely upon the applicant. The complainant's counsel deemed it illogical and unreasonable for someone to issue numerous cheques of significant amounts as mere "security" without a clear underlying obligation. It was stressed that the applicant had "not once denied issuance of the cheques, his liability to repay, or made cheques disputed." Legally, it was strongly contended that

the present case constitutes a clear "criminal act" and not merely a civil dispute. All essential ingredients of Section 489-F PPC namely, issuance of the cheque, dishonest intention, the purpose of repaying a loan or fulfilling an obligation, and dishonor upon presentation were stated to be fulfilled. The Supreme Court of Pakistan's ruling in Muhammad Sultan Versus The State, 2010 SCMR 806, was cited in support. The complainant further bolstered the accusation of dishonest intention by revealing that, in addition to the two disputed cheques, the applicant had previously issued two further cheques totaling Rs. 5,000,000/- (Rs. 5 lacs and Rs. 45 lacs) from an inactive bank account with an extremely low limit of only Rs. 500,000/-, demonstrating a clear pattern of fraud. Evidence of another complaint of a similar nature against the applicant in PS Mominabad by another lady was also presented. Crucially, the complainant's counsel relied upon Nazim Hussain v The State, 2019 PCrLJ 1759 Karachi High Court Sindh (Para 7), which posits that the issuance of an unconditional cheque inherently carries an implied impression of repayment or fulfillment of an obligation. Upon its dishonor, the prima facie presumption is that it was for repayment or obligation but failed. The burden then shifts to the accused to prima facie establish that the cheque was not issued with an implied guarantee of encashment. It was asserted that "mere claim or denial" by the accused would be insufficient to rebut this presumption, as the very purpose of Section 489-F PPC is to punish those who abuse the implied guarantee of a cheque to defraud innocent people. Lastly, the complainant's counsel refuted the applicant's plea of illiteracy by pointing out that the contract was in plain Urdu, and the applicant consistently communicated in written Roman English, making it illogical that he could not read Urdu, the national language. Learned APG For the State supported the arguments of the learned advocate for the complainant and prayed for dismissal of bail application.

5. This Court has meticulously considered the elaborate arguments presented by both the learned counsel for the applicant and the learned advocate for the complainant. The extensive documentary evidence, including the FIR, bounced cheques, bank memos, certified copies of previous bail orders, and some WhatsApp chats submitted by the complainant, has also been carefully examined.

6. At the stage of considering a bail application, the Court's role is not to conduct a detailed inquiry into the guilt or innocence of the accused, which is a matter for the trial court after recording comprehensive evidence. Rather, the Court's function is to make a tentative assessment

of the available material to determine whether there exist "reasonable grounds to believe" that the accused has committed a non-bailable offence.

7. Upon a tentative assessment of the material before this Court the complainant has undeniably presented a strong prima facie case for the commission of an offence under Section 489-F PPC. The issuance of cheques by the applicant and their subsequent dishonor due to "insufficient funds" are well-documented facts. The element of "dishonest intention," while ultimately a matter of proof at trial, is prima facie supported by the alleged facts, particularly the issuance of multiple dishonored cheques, including those from an inactive account with a low limit, and the alleged acknowledgment of liability by the applicant in electronic communications. The applicant's defense of having issued blank cheques as security and their subsequent misuse is a plausible defense that can be raised at trial. However, at the bail stage, the burden is typically on the applicant to present some cogent material to prima facie support this assertion. The complainant has forcefully argued that such a plea is illogical given the large amounts and multiple cheques involved, and has also cited case law (*Nazim Hussain v The State*) placing the initial burden on the accused to rebut the implied presumption of liability associated with an unconditional cheque. The applicant has not, at this juncture, discharged this burden to a convincing degree. The complainant has provided a reasonable and plausible explanation for the alleged delay in lodging the FIR, specifically the efforts to seek payment and amicable resolution, evidenced by the WhatsApp chats and recordings. This explanation significantly weakens the applicant's argument that the delay is fatal to the prosecution's case at this preliminary stage. While the allegations of physical maltreatment and jurisdictional manipulation are serious, their veracity at this stage is questionable due to the absence of any formal complaints, medical reports, or immediate legal recourse taken by the applicant at the relevant time. These claims remain unsubstantiated and appear to be a narrative introduced to seek sympathy, which, without concrete evidence, cannot be given overriding weight at the bail stage. It is indeed acknowledged that the offence under Section 489-F PPC does not fall within the prohibitory clause of Section 497 Cr.P.C., and the applicant has been incarcerated for about five months. While these are strong factors that generally weigh in favor of granting bail, they are not absolute. The rule that "bail is a rule, refusal an exception" is subject to the existence of "reasonable grounds to believe" that the accused has committed a non-bailable offence. In cases where the prima facie

evidence of a dishonest act is substantial, as appears to be the case here, the Court must also consider the gravity of the alleged financial fraud and its impact. The precedent cited (2023 SCMR 1977) also stresses the "exceptional foundations" required to deprive liberty, but the specific facts and the strength of the prima facie evidence distinguish the present case.

8. The complainant's assertion regarding the applicant's alleged "habitual" nature, evidenced by the issuance of other bounced cheques from an inactive account and a similar complaint in another police station, raises serious concerns about the applicant's propensity to commit similar offences. This factor is crucial in assessing whether granting bail would pose a risk of the applicant re-offending or continuing dishonest activities. Having considered all aspects, including the submissions of both sides, the documentary evidence, and the legal principles governing bail, this Court finds that the material available on record, particularly the documentary proof of dishonored cheques, the bank memos, and the electronic communications indicating the applicant's acknowledgment of liability, strongly establishes "reasonable grounds to believe" that the applicant has committed the alleged offence under Section 489-F PPC. The defense raised by the applicant regarding blank security cheques and payments made, while potentially valid at trial, has not been substantiated with sufficient prima facie evidence to outweigh the compelling material presented by the complainant at this stage. Furthermore, the allegations regarding the applicant's prior conduct and other similar complaints raise legitimate concerns about his potential for continuing similar activities if enlarged on bail. Therefore, despite the offence not falling within the prohibitory clause, the strength of the prima facie case and the surrounding circumstances do not warrant the exercise of discretion in favour of the applicant at this juncture. Resultantly, the instant bail application is hereby dismissed.

9. It is clarified that any observation made herein is tentative in nature and shall not prejudice the case of either party at the trial.

**J U D G E**