

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Bail Application No.363/2025

Applicant : Muhammad Usama son of Imtiaz Ali,  
Through Syed Mudassar Hussain Zaidi, Advocate

Respondent : The State  
through Mr. Rahat Ahsan, Addl. P.G Sindh

Complainant : Through Mr. Imdad Hussain Sahito, Advocate

Date of short order : 30.04.2025

Date of reasons : 03.05.2025

## **REASONS**

**KHALID HUSSAIN SHAHANI, J.** –Applicant Muhammad Usama seeks pre-arrest bail in a case bearing crime No.1040/2024 registered at P.S. Defence, Karachi under Sections 489-F and 406 PPC. His earlier bail plea was declined by the learned IIInd Additional Sessions Judge, Karachi South, vide order dated 13.01.2025.

2. The complainant, Omer Zafar, alleges that he entered into an agreement with the applicant, Muhammad Usama, on 06.12.2023 for the provision of services related to M/s U&R Petroleum Service, under which the applicant was to pay Rs.2,00,00,000/-. The complainant avers that despite rendering services, the applicant defaulted on payment, and upon repeated demands, issued Cheque No. 1935489639 dated 30.04.2024 for Rs.15,00,000/-, which was dishonoured upon presentation on 23.10.2024 due to insufficient funds. Thereafter, the applicant allegedly refused to make payment, leading to the filing of the instant FIR.

3. Learned counsel for the applicant contends that the FIR has been lodged after an inordinate and unexplained delay of 51 days which casts serious doubt on the veracity of the allegations. He further argued that a Memorandum of Understanding (MoU) was executed between the parties and pursuant to it, the applicant had paid a substantial amount totaling Rs.1,35,00,000/- to the complainant through cash and online transfers. The subject cheque was a post-dated guarantee cheque, issued only for the purpose of record. That the complainant failed to perform his part of the MoU by not delivering possession of 0.5 acre land near M-9 Motorway, and the applicant had even served a legal notice dated 09.12.2024 demanding performance and return of the cheque. That the instant FIR has been lodged with malafide intent to exert pressure and extract further

payments. He emphasized, the offences do not fall within the prohibitory clause of Section 497 Cr.P.C. and the case requires further inquiry. That the applicant is a respectable person with no prior criminal record, and apprehends arrest and humiliation at the hands of the police.

4. Conversely, learned counsel for the complainant vehemently opposed the grant of bail and argued that the cheque in question was issued towards a legally enforceable obligation, and its dishonour squarely attracts Section 489-F PPC. That allegations of full payment or settlement are afterthoughts intended to create confusion; if such payments had been made, the cheque would have been retrieved or cancelled by the complainant. That mere sending of legal notice cannot absolve criminal liability once a cheque is dishonoured and the accused refuses to pay thereafter. That no valid justification exists to interfere with the well-reasoned dismissal order of the trial court. The learned Assistant Prosecutor General supported the impugned order and adopted arguments advanced by the complainant's counsel. He submitted that sufficient material exists to connect the applicant with the alleged offence, and no mala fide on part of police has been shown. Learned advocate for complainant relied upon the case law cited at 2021 P.Cr.L.J 886, 2009 SCMR 174, 2024, SCMR 1719 and 2020 SCMR 249.

5. After hearing learned counsel for the parties and perusing the record, it appears that the entire dispute arises out of a contractual arrangement evidenced by an MoU. The applicant has produced material suggesting substantial payments made towards performance of the agreement, including through bank transfers and legal notice issued for complainant's default in performance. The cheque appears to have been issued not independently but as a part of ongoing business relations, possibly as a guarantee or security. Whether there remained any legally enforceable debt on the date of issuance is a matter requiring deeper inquiry best left for trial. The case thus attracts the principle of further inquiry under Section 497(2) Cr.P.C.

6. Upon further assessment, it appears that substantial dealings between the parties existed. 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. 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.

7. Furthermore, the applicant has no previous criminal record, appears to be a permanent resident, and has shown willingness to face the trial. The record also shows that a legal notice was served by the applicant requesting the complainant to return the cheque and comply with the terms of the MOU, yet no response was received. These facts cumulatively suggest that the FIR may have been lodged as a countermeasure to extract further money and apply pressure upon the applicant.

8. Thus, in view of the tentative assessment of the material on record, the disputed nature of the liability, and the cheque being a security instrument, the applicant has succeeded in making out a case of further inquiry. Accordingly, the confirmation of pre-arrest bail is justified in the interest of justice, particularly in light of the consistent judicial view that bail is the rule and its refusal is an exception in non-prohibitory clause offences. The case laws relied by the learned advocate for complainant, though contains the rich principles, but does not meet with the peculiar facts and circumstances of the case and therefore, respectfully, distinguishable.

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 12.02.2025 is hereby confirmed on the same terms and conditions and this order shall constitute the reasons for the short order dated 30.04.2025. 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**