

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.650/2025

Applicant : Nasir Ghani son of Abdul Ghani,
through M/s Daniyal Muzafar, Bushra Zaheer
and Mamoonah Nasreen, advocates for applicant.

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

Date of hearing : 30.04.2025

Date of order : 06.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Nasir Ghani seeks pre-arrest bail in a case bearing crime No. 455 of 2024 registered at P.S Boat Basin Karachi offence under Section 489-F, PPC. The earlier bail application filed before the learned XI-Additional Sessions Judge, Karachi South, was declined vide order dated 01.03.2025.

2. As per prosecution case, the complainant Habib Ali Shah, a retired police officer, alleged that he purchased a property referred to as a “preacher” from the present applicant for Rs.8.3 million. Upon the applicant’s failure to honour the transaction, the complainant claims that two cheques bearing Nos. 29980578 and 29980579, amounting to Rs.14.3 million and Rs.4 million respectively, were issued by the applicant and subsequently dishonoured.

3. Learned counsel for the applicant contended that the allegations are false, frivolous, and motivated by mala fide. It was argued that; the cheques in question were not issued in favour of the complainant, but rather in the name of one Abdul Jabbar, who has neither filed the FIR nor claimed any grievance in the matter; the complainant has produced a General Power of Attorney purportedly issued by Abdul Jabbar in his favour. However, no explanation has been offered as to why the principal himself remained absent, particularly when serious criminal allegations were raised; the complainant being a retired police officer, has exercised his influence to initiate criminal proceedings in a matter that is essentially civil in nature, pertaining to an alleged failed transaction between private individuals; the act of a private party assuming the role of a complainant in a criminal case through a General Power of Attorney, in a matter involving financial recovery, itself demonstrates misuse of criminal machinery for

purposes of pressure and coercion; the applicant's cheques were never dishonoured for insufficiency of funds; rather, the chequebook was reported as misplaced and was blocked by the applicant before the alleged presentation of the said cheques. This is confirmed through the challan dated 02.10.2024 and the bank's letter, both placed on record; the offence under Section 489-F PPC does not fall within the prohibitory clause of Section 497(1) Cr.P.C.; therefore, bail is the rule and refusal is an exception; the matter requires further inquiry under Section 497(2) Cr.P.C., particularly when the complainant has failed to show any documentary evidence of the alleged transfer of Rs.8.3 million; the applicant has already joined the investigation and appeared before the trial court in Case No. 5780 of 2024, where the supply of copies is awaited. In support of his contentions, learned counsel placed reliance upon the case law reported as:

- **2024 SCMR 1598**, where the Hon'ble Supreme Court held that issuance of cheque as security or in absence of a proven obligation does not attract Section 489-F;
- **2023 SCMR 5** and **2023 SCMR 749**, which emphasize that mala fide prosecution to recover civil liabilities is an abuse of process;
- **2022 YLR Note 138 [Sindh]**, where the High Court quashed FIRs found to be lodged for purposes of recovery rather than for penal consequences;
- and the earlier remembered line of authorities including **PLD 2012 Sindh 464**, **2022 SCMR 592**, **2023 SCMR 2122**, and **2013 SCMR 51**, which collectively stress that mere dishonour of cheque is not sufficient, dishonesty, present obligation, and intent must be proved.

4. Conversely, the learned DPG duly assisted by the counsel for the complainant opposed the grant of bail, contending that; the issuance of cheques by the applicant and their subsequent dishonour is an admitted fact; the applicant did not appear before the Investigating Officer, was declared absconder, and was avoiding due process of law; that possession of a General Power of Attorney legally entitles the complainant to lodge an FIR on behalf of Abdul Jabbar and initiate criminal proceedings; that even if the cheques were blocked, it does not mitigate criminal intent, as the same was done to avoid encashment.

5. The record reflects that the cheques were issued in favour of Abdul Jabbar, not the complainant. No complaint has been made by Abdul Jabbar. The FIR was lodged by Habib Ali Shah on the strength of a

General Power of Attorney, but without substantiating the alleged payment of Rs.8.3 million. More critically, the complainant is a retired police officer who has taken up the matter of private debt recovery and resorted to criminal prosecution, a circumstance that raises serious questions about the bona fides of the prosecution. In *PLD 2012 Sindh 464* and *2023 SCMR 2122*, the superior courts have repeatedly held that criminal proceedings under Section 489-F PPC cannot be used to recover disputed civil liabilities, especially where the transaction lacks transparency or independent documentation.

6. Moreover, the investigation report dated 02.10.2024 indicates that the cheques were not dishonoured for insufficiency of funds but were blocked by the drawer due to loss or misplacement, which in itself negates the existence of "dishonest issuance" a sine qua non for the application of Section 489-F PPC.

7. Given that the alleged transaction has not been acknowledged by the actual payee of the cheques, the complainant lacks locus standi to pursue criminal charges, especially where mala fide is apparent. This, coupled with the civil nature of the dispute, absence of proof of financial transfer, and the fact that the offence is not covered under the prohibitory clause, entitles the applicant to the concession of pre-arrest bail.

8. Accordingly, this bail application is allowed. Ad-interim bail already granted to the applicant vide order dated 13.03.2025 is hereby confirmed on the same terms and conditions. The applicant shall continue to cooperate with the investigating agency and attend the trial proceedings as and when required. The observations made herein are tentative in nature and shall not prejudice the trial court in deciding the matter on merits.

J U D G E