

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.990 of 2025

Applicant : Muhammad Rizwan son of Abdul Razzaq,
through Mr. Ghulam Shabbir Babar, Advocate

Respondent : The State
through Ms. Rahat Ahsan, Addl. P.G Sindh
duly assisted by Mr. Afaq Akhter, Advocate for
the complainant.

Date of hearing : 28.04.2025

Date of order : 06.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. Applicant Muhammad Rizwan seeks post-arrest bail in a case bearing crime No.104/2025 offence under Section 489-F PPC of P.S. North Nazimabad, Karachi. His earlier applications were declined by the learned Judicial Magistrate and the learned VIIth Additional Sessions Judge, Karachi Central vide orders dated 29.03.2025 and 10.04.2025 respectively.

2. Succinctly, the prosecution's case is that the complainant invested a sum of Rs. 17.9 million in a business venture at the behest of the accused persons, including Muhammad Asad and Muhammad Rizwan, through Nayab, a lady. It is alleged that a cheque bearing No. A-61113710 for Rs.3 million, purportedly issued by the present applicant, was dishonored upon presentation, thereby attracting the offence under Section 489-F PPC.

3. Learned counsel for the applicant has contended that; there is no privity of contract or any written agreement between the complainant and the present applicant; the complainant's own statement under Section 161 Cr.P.C. reveals that the money was paid to Nayab, not to the applicant directly; the cheque in question appears to have been misused and deposited unilaterally; the agreements and documents produced by the complainant during hearing relate to one Muhammad Asad, not the present applicant; no document, acknowledgment, receipt, or memorandum of understanding is available to demonstrate any enforceable financial obligation of the applicant towards the complainant; the case calls for further inquiry under Section 497(2) Cr.P.C., particularly in light of the principles laid down in

2023 SCMR 2122 and 2024 SCMR 1596, where it was held that without proof of a legal obligation or liability, mere dishonor of a cheque does not suffice to attract the mischief of Section 489-F PPC; the applicant is a permanent resident of Karachi, not a flight risk, and is willing to comply with all conditions imposed by this Court.

4. Conversely, the learned DPG, duly assisted by the learned counsel for the complainant, submits that the applicant, Muhammad Rizwan, issued a Rs. 3 million cheque as part of a business transaction, which was dishonoured upon presentation, thereby constituting an offence under Section 489-F PPC. Despite the applicant's claim of no enforceable obligation, the complainant's consistent testimony and the dishonoured cheque strongly establish a prima facie case of dishonesty. The applicant poses a significant risk of abscondence and evidence tampering, especially given the large sum involved. Relevant case law further supports the denial of bail in financial fraud cases, where the risk of flight and tampering is evident. Therefore, in light of the evidence and legal precedents, the bail application should be dismissed in the interest of justice. Learned advocate for complainant relied upon case laws reported as *2011 MLD 1288*, *2014 MLD 433*, *2023 P. Cr. L. J 398* and *2010 MLD 760*.

5. From the record, it manifest, there is no written agreement or instrument directly executed between the complainant and the present applicant evidencing the alleged liability or debt. The agreements relied upon by the complainant are in the name of Muhammad Asad not Muhammad Rizwan (applicant). The cheque was allegedly presented by the complainant without the context of any contemporaneous instrument of liability, whether the said cheque was issued voluntarily by the applicant and whether it was issued to discharge a legally enforceable obligation or not are questions which cannot be determined at the bail stage and must await trial.

6. As regards the case law cited by the learned advocate for the complainant:

- The judgment reported as *2023 P. Cr. L. J 398* turns on a repayment agreement acknowledging liability, which is absent in the present matter;

- Similarly, 2010 MLD 760 involved negotiable instruments backed by a formal agreement, which again distinguishes it from the present case where no written contract or MOU exists between the complainant and the applicant;
- The case reported as 2011 MLD 1288 is premised on an express admission of partial payment by the accused, which is not the factual situation here as the applicant flatly denies issuance of the cheque or any liability;
- In 2014 MLD 433, the Court's observation regarding risk of flight was based on facts entirely different from the present applicant's case, who has shown his permanent residence in Karachi and has no prior history of absconding.

It is thus clear that all the case laws relied upon by the complainant's counsel are distinguishable and not applicable to the peculiar facts and circumstances of the present case.

7. The Hon'ble Supreme Court in 2023 SCMR 2122 and 2024 SCMR 1596, has emphasized that Section 489-F PPC is not intended as a recovery mechanism and that criminal prosecution must not be used to enforce civil liabilities in the absence of clear, prima facie evidence of dishonest intention and a legally enforceable debt or obligation. In the present case, such elements are prima facie missing, thereby rendering the matter one of further inquiry.

8. It is a settled proposition that bail in offences not falling within the prohibitory clause is to be granted as a rule and its refusal is an exception, particularly where no likelihood of tampering with prosecution evidence or absconding is shown. No such risk has been demonstrated in the instant case.

9. Consequently, the applicant Muhammad Rizwan has succeeded to make out case for further inquiry, as envisaged under section 497(2) Cr.P.C. Accordingly, he is admitted to post-arrest bail, subject to his furnishing solvent surety in the sum of Rs. 1,000,000/- (Rupees One Million only) and a P.R. bond in the like amount to the satisfaction of the learned trial Court.

10. Needless to state that the observations made herein are purely tentative in nature and shall not prejudice the merits of the case during trial.

Judge

JUDGE