

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
MIRPURKHAS**

Crl. Bail Application No.S-36 of 2025

Applicant: Kalash son of Bhero (present in person).
Through Mr. Javed Chaudhri, Advocate.

Respondent: The State.
Through Mr. Ghulam Abbas Dalwani, D.P.G.

Complainant: Teerath Das son of Bheero (present in person)
Through Aziz Ahmed Laghari, Advocate.

Date of hearing: 26.08.2025

Date of order: 26.08.2025

ORDER

Amjad Ali Sahito, J: Through this Bail Application, the applicant/accused seeks pre-arrest bail in Crime No.207/2024 for offence under section 489-F P.P.C registered at Police Station Umerkot City, after his bail plea has been declined by the learned Additional Sessions Judge-I, Umerkot vide order dated 07.02.2025.

2. The details and particulars of the F.I.R are already available in bail application and the F.I.R, as such, need not to reproduce the same hereunder.

3. Learned counsel for the applicant/accused has contended that the present applicant/accused is innocent and has falsely been implicated in the instant case with mala fide intent. It is submitted that the FIR was lodged after an unexplained and inordinate delay of three days, which casts serious doubt on the veracity of the allegations. He further submitted that the cheque of the applicant/accused was lost for which the applicant/accused lodged N.C at the concerned Police Station. The PWs in their 161 Cr.P.C Statement have falsify the version of the complainant. Learned counsel further argued that in contents of FIR complainant has admitted that there is business transaction between him and applicant/accused, hence this is matter of civil nature, which requires further inquiry. It is further argued that two investigations were conducted by the Police and in the first investigation police submitted the final report/challan under

B-Class and after re-investigation the final report/challan was submitted under C-Class by the Police. Learned counsel further argued that the alleged offence does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C and the applicant/accused is entitled for confirmation of interim pre-arrest bail.

4. Learned counsel for the complainant as well as learned D.P.G have vehemently opposed for confirmation of interim pre-arrest bail and in reply of the learned defense counsel, the learned counsel for the complainant also argued that the police with malafide intention submitted the reports under B & C-class, despite the signature of the accused on subject cheque was found similar in Forensic Report. They have further contended that after dishonor of cheque the complainant approached to Police Station, but Police refused to lodge his FIR, thereafter complainant has filed application under section 22A& B Cr.P.C and obtained order for registration of FIR from court of Ex-Officio Justice of Peace and produced such order before police and lodged the FIR, therefore, delay in registration of FIR is very much explained. They have further contended that the applicant/accused has committed cheating/fraud and he is not entitled for extraordinary relief of pre-arrest bail and prayed for its dismissal.

5. I have heard the learned counsels for respective parties and perused the material available on record.

6. From the perusal of the record, it transpires that the complainant and the applicant/accused were on friendly terms. The applicant/accused requested the complainant to arrange onion seeds, whereupon the complainant approached the shopkeeper, namely Kelash, and requested him to provide the said seeds. In consideration thereof, the applicant/accused issued a cheque amounting to Rs.40,00,000/- (Rupees Forty Lakh) drawn on Account No. PK40SUMD1202087140123366 maintained at Summit Bank, Mirpurkhas, bearing Cheque No. 00172211 dated 25.08.2024. Upon presentation before the Bank, the said cheque was dishonoured and returned with the memo citing "insufficient funds." Thus, the essential ingredients of Section 489-F, PPC, stand fully attracted.

7. It is further alleged that the applicant/accused, despite having knowledge that his account did not contain sufficient funds, nonetheless issued the aforesaid cheque, thereby evidencing his mala fide intent, absence of bona fide repayment, and commission of acts amounting to cheating and fraud upon the complainant.

8. As regards the contention advanced by the learned counsel for the applicant/accused that the prosecution witnesses did not support the complainant's version, it is pertinent to note that the learned counsel for the complainant has placed reliance upon the order dated 19.08.2025 passed by the learned Civil Judge & Judicial Magistrate-II, Umerkot, wherein the complainant produced his witnesses, who duly filed their statements along with their biometric affidavits in corroboration of the complainant's stance.

9. At this bail stage, only a tentative assessment is to be made for the grant of bail. Sufficient material is available to connect the applicant/accused with the commission of offence under Section 489-F P.P.C, and no mala fide or ill-will has been attributed to the complainant by the applicant. In this regard, I am fortified with the case law of Hon'ble Supreme Court of Pakistan **[2019 SCMR 1129]** wherein the Hon'ble Supreme Court of Pakistan has held as under:

"Grant of pre-arrest bail is an extra ordinary remedy in criminal jurisdiction; it is diversion of usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges through abuse of process of law, therefore a petitioner seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala fide; it is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation..... the principles of judicial protection are being faithfully adhered to till date, therefore, grant of pre-arrest bail essentially requires considerations of malafide, ulterior motive or abuse of process of law."

10. Learned counsel for the applicant/accused has failed to make out the case for grant of bail. Accordingly, the bail application filed

on behalf of the applicant/accused stands **dismissed**. The interim bail granted to the applicant/accused vide order dated **13.02.2025** is hereby **recalled**.

11. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicants on merits.

JUDGE

Adnan Ashraf Nizamani