

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1246 of 2025

Abdullah son of Ahmed Mallar.....Applicant/Accused

Versus

The State.....Respondent

Date of Hearing : 27.10.2025

Date of Short Order : 27.10.2025

For the Applicant : Mr. Karamullah Qureshi, Advocate.

For the complainant : Mr. Arif Khan, Advocate.

For the State : Mr. Muhammad Noonari, D.P.G.

ORDER

TASNEEM SULTANA, J: Through this criminal bail before arrest application, the applicant Abdullah son of Ahmed Mallar seeks pre-arrest bail in Crime No.237 of 2024 registered at Police Station Memon Goth, Karachi, under Sections 489-F, PPC. Earlier his bail plea was declined by the learned VIIIth Additional Sessions Judge, Malir Karachi vide order dated 29.08.2024.

2. Brief facts of the prosecution case are that the complainant Manzoor Ahmed has sold out 12 buffalos to Abdullah (present applicant) and one Muhammad Ahmed against the total sale of Rs.22,00,000/- in the month of August-2021 through verbal agreement and against that deal, the vendees have paid cash Rs.2,00,000/- to complainant and they also handed over files of two plots, valued to Rs.10,00,000/-. For the remaining amount of Rs.10,00,000/-, the applicant/ accused has issued two cheque Nos.10684302, dated 17.09.2021, amounting to Rs.5,00,000/ and cheque No.10684303, dated 27.09.2021, amounting to Rs.5,00,000/- respectively under his signatures to the complainant and upon presenting said cheques to bank concerned, both were dishonored due to insufficient funds, consequently the complainant has approached to accused/ applicant Abdullah and his partner and narrated them about dishonoring the cheques in question, but in vain, hence, this FIR.

3. Learned counsel for the applicant contended that the present case has been falsely implicated; that the applicant had purchased three plots from Ahmed Khan for a total sale consideration of Rs.15,00,000/- and the applicant paid Rs.10,00,000/- through two cheques mentioned in FIR and Rs.500,000/- cash was also paid to said Ahmed Khan, who promised the applicant to hand over possession of said plots, thereafter the said Ahmed Khan disappeared and the complainant came to the applicant and said that the subject cheques are with him and he has to pay the said amount; that the applicant has no concern with the complainant as the sale and purchase of plots was between the applicant and said Ahmed Khan; that there is a delay of three [03] years in lodging of FIR; that the essential ingredient of dishonest intention at the time of issuance of cheques is lacking; that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C.; and that the applicant is ready to face the trial, therefore, he deserves the concession of bail.

4. Conversely, learned DPG assisted by learned counsel for the complainant opposed the grant of bail; contending that the applicant, in order to deceive the complainant, issued two cheques amounting to a substantial sum which were all dishonoured on presentation; that such conduct prima facie constitutes a fraudulent and dishonest act attracting the mischief of Section 489-F PPC; that the cheques were not given as security but towards discharge of a legally enforceable liability; that the offence, being against public confidence in commercial dealings, does not warrant any leniency at the stage of bail.

5. Heard. Record perused.

6. From a tentative assessment of the material available on record, it appears that the allegation against the applicant is of issuing cheques to the complainant, which on presentation were dishonoured. The claim of complainant, however, revolves around a business transaction wherein the applicant asserts that the cheques were issued to someone else not the complainant.

7. Prima facie, the mere issuance of a cheque(s) and its being dishonoured by itself is not an offence, unless and until dishonesty on the part of a payer is proved.

8. Provisions of Section 489-F, P.P.C., will only be attracted if the following essentials ingredients are fulfilled and proved by the prosecution :-

- (i) *issuance of the cheque,*
- (ii) *such issuance was with dishonest intention;*
- (iii) *the purpose of issuance of cheque should be :-*
 - (a) *to repay a loan; or*
 - (b) *to fulfill an obligation (which in wide term inter-alia applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds a person to some performance).*
- (iv) *on presentation, the cheques are dishonored. However, a valid defense can be taken by the accused, if he proves that;-*
 - (i) *he had made arrangements with his bank to ensure that the cheques would be honored; and*
 - (ii) *that the bank was at fault in dishonoring the cheque.*

9. Merely, receiving a huge amount of money in a business transaction and its subsequent not delivery to the concerned person requires declaration on the subject by the competent court of law and as such there are remedies available to the aggrieved party, however at this stage this court cannot determine the validity of such transaction between the parties on the subject issue at the bail stage, therefore, the controversy between the parties seems to be of a civil nature based on documentary evidence as per narration made by the complainant in the FIR, however, the law on the aforesaid subject is now settled and the maximum relief for the complainant of the case is the conviction of the responsible person and punishment as a result thereof, which may extend to 3 years or with a fine or with both. Primarily, the offense under Section 489-F, P.P.C. has been inserted in Chapter XVIII of P.P.C., regarding offenses relating to documents and to trade of property marks.

10. When on 25.10.2002, Section 489-F, P.P.C. was inserted in P.P.C., Order XXXVII, C.P.C. was already a part of the statute book providing the mode of recovery of the amounts on the subject matter of negotiable instruments, and a complete trial is available for the person interested in the recovery of the amounts of a dishonored

cheque, therefore, not only that the complainant in a criminal case under Section 489- F, P.P.C. cannot ask a Criminal Court to effect any recovery of the amount involved in the cheque, but also the amount whatsoever high it is, would not increase the volume and gravity of the offense.

11. The offence alleged under Section 489-F, PPC carries a maximum punishment of three years and, therefore, does not fall within the prohibitory clause of Section 497, Cr.P.C. The settled principle is that in such cases, grant of bail is a rule and refusal an exception. Reliance is placed on Shehzad v. The State (2023 SCMR 679) and Tariq Bashir and others v. The State (PLD 1995 SC 34). The Hon'ble Supreme Court has repeatedly held that bail is neither punitive nor preventive, as punishment begins only after conviction. If a person is mistakenly granted bail, such error can be corrected upon conviction, whereas wrongful pre-trial detention, if ultimately found unjustified, causes irreparable harm to liberty. Reliance is also placed upon the judgment in Nazir Ahmed alias Bharat v. The State and others (2022 SCMR 1467), wherein it was observed as under:

“Section 489-F of P.P.C. is not a provision which is intended by the legislature to be used for recovery of an alleged amount, rather for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of C.P.C.”

12. The FIR was lodged more than three years after the cheques were dishonoured, with no plausible explanation of such delay; such inaction, prima facie, raises doubt regarding the bona fides of the complainant. Investigation has been completed, challan has been submitted. The applicant has joined the investigation.

13. In view of the above facts and circumstances, interim pre-arrest bail granted to the applicant vide order dated 15.05.2025 was confirmed on the same terms and conditions by short order dated 27.10.2025 and these are the reasons for the same.

14. The applicant shall attend the trial regularly and shall not misuse the concession of bail; any violation shall entail cancellation of bail according to law. The observations made herein are tentative in nature and shall not prejudice either party at trial.

JUDGE

Ayaz Gul