IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.1989 of 2025

Bashir Khan son of Haji Ghulam Muhammad……Applicant/Accused

Versus

The State……Respondent

Date of Hearing : *03.11.2025*

For the Applicant	:	Mr. Muhammad Akram Qureshi, Advocate.
For the complainant	:	None present for complainant.
For the State	:	Ms. Rubina Qadir, D.P.G.

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ORDER

TASNEEM SULTANA, J: Through this criminal bail before arrest application, the applicant Bashir Khan son of Haji Ghulam Muhammad seeks post-arrest bail in Crime No.302 of 2025 registered at Police Station Shah Faisal Colony, under Sections 489-F, PPC. Earlier his bail plea was declined by the learned VIIth Sessions Judge, Karachi East vide order dated 16.07.2025.

2. The brief facts of the prosecution case are that the complainant, a cloth merchant, allegedly purchased a flat in 2021 for a total sale consideration of Rs.45,00,000/-, out of which Rs.17,00,000/- was paid through pay order in the name of one Bashir, while the balance amount of Rs.28,00,000/- was paid in cash to the present applicant. It is alleged that despite receipt of the entire amount, the applicant sold the said flat to another person. Upon learning this, the complainant approached the applicant, who purportedly obtained the documents from him under the pretext of transferring the property and kept him under false assurances. Thereafter, the applicant issued several cheques to the complainant, the last being dated 06.01.2025 for Rs.39,00,000/-, which was dishonoured upon presentation, leading to the registration of the present FIR.

3. Learned counsel for the applicant contended that the applicant has been falsely implicated with mala fide intent; that there is an unexplained delay of about six months in lodging the FIR; that the

applicant and complainant are closely related and the dispute between them is of civil nature; that the cheque mentioned in the FIR was issued only as a guarantee and not meant for encashment; that subsequently, the applicant even paid Rs.600,000/- to the complainant, which fact is supported by a video recording; that the essential ingredient of dishonest intention at the time of issuance of the cheque is lacking; and that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. Learned counsel added that the applicant is ready to face trial, therefore he is entitled to the concession of bail.

4. Conversely, learned D.P.G. opposed the plea and argued that the applicant issued a substantial cheque which was dishonoured upon presentation, thereby defrauding the complainant; that the dishonoured cheque was issued not as a security but towards discharge of a legally enforceable liability; and that such conduct prima facie attracts the mischief of Section 489-F, PPC. She contended that the offence undermines public confidence in financial transactions and does not warrant leniency at the bail stage.

5. Heard. Record perused.

6. A tentative assessment of the material available on record reveals that the gravamen of the allegation against the applicant is the issuance of a cheque which was dishonoured upon presentation. The dispute, however, emanates from a property transaction, and the applicant's stance is that the cheque was issued merely as security and not for encashment.

7. Prima facie, the mere issuance of a cheque(s) and its being dishonored by itself is not an offense, 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. At this stage, the element of dishonest intention appears a matter to be determined by the trial Court after recording of evidence. The dispute, on the face of record, arises from a contractual or civil transaction, and the penal provisions of Section 489-F, PPC, may not be attracted in the absence of such intent. The offence alleged does not fall within the prohibitory clause of Section 497 Cr.P.C., and the case calls for further inquiry.

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 six months after the cheque was 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 already granted to the applicant/ accused vide order dated 30.07.2025 was confirmed on same terms and conditions, by a short order dated 03.11.2025 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