

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Criminal Bail Application No.1125 of 2025

Applicant : Muhammad Mateen Khan S/o
Muhammad Hussain Khan through Ms.
Aanisa Ghouri, Advocate

Complainant : Moin-ur-Rehman S/o Muneer Ahmed
through Mr. Abdul Fatah Jalbani,
Advocate

Respondent : The State
through Mr. Muhammad Noonari, DPG

Date of hearing : 17.09.2025

Date of order : 17.09.2025

ORDER

Dr. Syed Fiaz Ul Hassan Shah, J. - Through this Bail Application, applicant/accused seeks pre-arrest bail in Crime No.162/2025 for offence under Section 489-F PPC registered at PS Mubina Town. His bail plea has been declined by the learned Addl. Sessions Judge-III, Karachi East [Trial Court] vide order dated 30.04.2025.

2. Brief facts of the case are that accused has committed embezzlement of Rs.72 lacs with the Company namely Plastic World Ltd.; as such, he has given two cheques amounting to Rs.36 lacs each which were dishonoured on presentation. Hence, the instant FIR was lodged by the Recovery Manager of the Company.

3. Learned counsel for the applicant contends that the cheques under dispute have been issued by the applicant in the police station Mubina Town and no liability is fixed upon the applicant. She further states that she has approached to learned Justice of Peace for registration of the cases against forcible kidnapping and taking over

the cheques at the police station Mubina Town. Lastly, she states that a Suit for Cancellation of such negotiable instruments bearing No.9867/2025 has been filed before the Consumer Court/Civil Judge, East Karachi.

4. On the other hand, learned counsel for the complainant states that the applicant has embezzled the funds of the company as he was Recovery Officer and after recovery, he failed to deposit the said amount in the Company's account and eventually the Company has found that Rs.72 lacs have been embezzled by the applicant. When such facts were shown to the applicant, he has issued two cheques amounting to Rs.36 lacs each which were bounced on presentation; as such, he is not entitled for grant of bail. Learned DPG has supported the contentions of learned counsel for the complainant.

5. I have heard the learned counsel for the parties and with their able assistance perused the record.

6. No doubt, grant of pre-arrest bail is an extraordinary relief; however, in the recent Judgment of the Hon'ble Supreme Court of Pakistan, it has been held that grounds for grant of post-arrest bail are attracted in the case of pre-arrest bail as well. I have considered the contention of learned counsel for the applicant that both the cheques have been taken under duress and coercion for which she has filed a Suit for Cancellation of both the negotiable instruments each amounting to Rs.36 lacs it can only be decided after recording the evidence of the parties so also criminal liability can only be determined by the trial Court after recording the evidence of prosecution. It is observed that the contents of the FIR and challan / charge sheet state that the cheques were issued in consequence of

in-house inquiry held by the Complainant's Company and it was found that the applicant has made embezzlement. When all such material has been shown to the applicant, he has apologized and issued two cheques which on presentation before the concerned Bank were dishonoured. However, neither the FIR nor the challan has any reference or connection with the contentions of the counsel for the complainant about the embezzlement of funds. No single document has been provided by the Company/Complainant before the I.O. enabling him to refer the same in his challan / charge sheet before the trial Court. Prima facie this shows the malafide on the part of complainant as he has failed to give any reference or documents with regard to the embezzlement when it is specific plea that due to such embezzlement, the Complainant had claimed a liability which has returned in shape of cheques by the Applicant. Contrary to this, contentions of learned counsel for the applicant that these cheques have been obtained under duress and coercion at police station Mubina Town deserved appreciation.

7. The doctrine of rule of consistency or equal treatment, traditionally applied by courts in cases of post-arrest bail, has now been authoritatively extended to pre-arrest bail jurisprudence. The Hon'ble Supreme Court of Pakistan, in its judgment ***Jamaluddin Rabail v. The State (Criminal Petitions No. 41-K & 42-K of 2023)***, has laid down the principle that the doctrine of consistency is equally applicable in cases involving pre-arrest bail. The relevant portion of the judgment is instructive and delineates that although the considerations for grant of pre-arrest and post-arrest bail are generally distinct, where the role ascribed to both Applicant is identical, the denial of relief to one on the basis of procedural distinction would be illusory. It was observed that if the Applicant enjoying ad interim pre-arrest bail is denied relief solely on the

ground that pre-arrest bail entails different considerations, while the co-accused is granted post-arrest bail on merits, then upon arrest, the petitioner would immediately become entitled to post-arrest bail on the plea of consistency. Such a situation would render the distinction academic and defeat the principle of equal treatment.

Reliance is placed on the following precedents:

- *Muhammad Ramzan v. Zafarullah* (1986 SCMR 1380)
- *Kazim Ali and others v. The State and others* (2021 SCMR 2086)
- *Muhammad Kashif Iqbal v. The State and another* (2022 SCMR 821)
- *Javed Iqbal v. The State through Prosecutor General of Punjab and another* (2022 SCMR 1424)

8. Furthermore, the principles governing the grant of pre-arrest bail have been elaborated by the Hon'ble Supreme Court in ***Rana Muhammad Arshad v. Muhammad Rafique and another* (PLD 2009 SC 427)**, wherein it was held that such relief should be confined to cases where a good prima facie case is made out in respect of the alleged offence; the denial of bail would result from some ulterior motive aimed at injuring the applicant; or the applicant would suffer irreparable harm if bail is refused.

9. The jurisprudence governing the grant of bail is fundamentally anchored in the principle of reasonableness, requiring a tentative assessment of each case on its own merits and factual matrix. This assessment is not merely procedural but is informed by the broader analogy that, should the accused ultimately be acquitted after prolonged trial proceedings, the criminal justice system does not provide any statutory mechanism for reparation or compensation for the extended period of incarceration endured under unproven charges. It is, therefore, legally and morally untenable to keep an accused person incarcerated indefinitely while awaiting the conclusion of trial, especially when such proceedings may culminate

either in conviction or acquittal. In the latter scenario, the absence of statutory remedies for wrongful or prolonged detention underscores the necessity of bail as the only viable safeguard against irreparable harm. This principle has been consistently recognized and developed by the Superior Courts of Pakistan, which have emphasized the doctrine of *tentative assessment*—a judicial tool that enables courts to evaluate the sufficiency of material available at the bail stage without delving into conclusive findings. Each case must be assessed independently, with due regard to its peculiar facts and circumstances. In the present matter, upon conducting such tentative assessment and examining the statutory framework, it is evident that the case does not fall within the prohibitory clause of Section 497 of the Criminal Procedure Code. Accordingly, the considerations for grant of bail remain governed by the settled principles of law and judicial discretion.

10. In view of the foregoing, the present case squarely falls within the parameters laid down by the Hon'ble Supreme Court. Accordingly, the applicant is granted and confirmed the concession of pre-arrest bail on the same terms and conditions, including surety and personal recognizance bond, as were imposed while granting interim pre-arrest bail vide Order dated 05.05.2025.

11. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the trial Court, which shall decide the case strictly on its merits and in accordance with law.

JUDGE