IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2586 of 2025

Muhammad Shahrukh son of Jumme Den.....Applicant/Accused

Versus

The State.....Respondent

Date of Hearing : *31.10.2025*

Date of Short Order : *31.10.2025*

For the Applicant : Mr. Habib Ahmed, Advocate.

For the complainant : None present for complainant.

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

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ORDER

TASNEEM SULTANA, J: Through this criminal bail before arrest application, the applicant Muhammad Shahrukh son of Jumme Den seeks post-arrest bail in Crime No.711 of 2025 registered at Police Station Tamoria, Karachi, under Sections 489-F, PPC. Earlier his bail plea was declined by the learned VIIth Additional Sessions Judge/MCTC-02, Central, Karachi vide order dated 23.09.2025.

2. Brief facts of the prosecution case are that complainant Muhammad Farhan S/o Sameer Khan is engaged in personal business having a milk shop in the name of Subhanallah Milk Shop located near Kaneez Fatima Society, Scheme 33. In the year 2024, he had to travel to Punjab to attend his nephew's wedding, therefore, he handed over the shop to his relative named Muhammad Shahrukh (present applicant) to run the same during his absence on the condition to give him a share of the profits; in the year 2025 the tenancy agreement of the shop was expired and the applicant/ accused got the new tenancy agreement of the shop with the shop owner (complainant), they mutually decided that the applicant would pay him for the fixtures and fitting installed in the shop and total amount was agreed at Rs.675,000/- for which the applicant/accused issued three cheques bearing Nos.26076972 amounting to Rs.70,000/-, cheque No.26076975 amounting to Rs.300,000/- and Cheque No.2607694 amounting to Rs.300,000/-; which were deposited by the complainant in his bank account on 16.05.2025 and

29.05.2025 respectively for encashment, however, all the cheques were dishonored (bounced), hence, this FIR.

3. Learned counsel for the applicant contended that the present case has been falsely implicated with malafide intention; that there is no private witness cited in the FIR; that the business terms were admitted by the complainant and the cheques were issued as security and not for encashment; 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 opposed the grant of bail; contending that the applicant, in order to deceive the complainant, issued three 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 as a security not for encashment. 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.

7. 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.*

8. 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.

9. 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.

10. 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."*

11. In view of the above facts and circumstances, applicant/ accused was granted post-arrest bail subject to furnishing solvent surety in the sum of Rs.50,000/- and P.R bond in the like amount to the satisfaction of the trial Court, by a short order dated 31.10.2025 and these are the reasons for the same.

12. 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