

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.920 of 2025

Applicant : Sabir Ahmed Qureshi, through Mr. Prince Ali Memon, Advocate.
Complainant : Mohsin Ahmed, in person.
Respondent : The State, through Mr. Mumtaz Ali Shah, A.P.G.
Date of Hearing : 06.11.2025
Date of Order : 06.11.2025

ORDER

TASNEEM SULTANA, J: Through this criminal bail before arrest application, the applicant Sabir Ahmed Qureshi seeks pre-arrest bail in Crime No.100 of 2025 under Sections 489-F, PPC, registered at Police Station Joharabad, Karachi. Earlier same relief was granted by the learned VIIth Additional Sessions Judge/MCTC, Karachi but was recalled vide order dated 29.03.2025.

2. Brief facts of the prosecution case, as narrated in the FIR, are that the complainant Mohsin Ahmed, son of Imtiaz Ahmed, who is engaged in installation work, allegedly extended a loan of Rs.13,00,000/- to the applicant. As security, the applicant is stated to have handed over the file of Plot No.2/15C, Liaquatabad, Karachi, along with a cheque of the same amount bearing No.00111996 dated 13.09.2024, drawn on the account of S.G. Builders and Developers. It is alleged that the applicant assured the complainant that the cheque would be taken back upon repayment of the loan. However, despite repeated demands, the applicant failed to return the amount, whereafter the complainant deposited the cheque on 28.02.2025 in his account No.000001919 maintained at Faisal Bank, Naseerabad Branch, Block-14, F.B. Area, Karachi, which was dishonoured for insufficient funds. Resultantly, the complainant lodged the present FIR against the applicant.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated with malafide intention; that the disputed cheque was given as a security to another person but the complainant misused the same with malafide intention; that

there is no privity of contract between the applicant and the complainant, hence the case of the applicant requires further inquiry; 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 A.P.G. opposed the plea and argued that the applicant issued a 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. He 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 cheque which was dishonoured upon presentation. The dispute, however, emanates from a business transaction, and the applicant's stance is that the cheque was issued merely as security and 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. 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.

9. 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.”

10. The Investigation has been completed, challan has been submitted. The applicant has joined the investigation.

11. In view of the above facts and circumstances, interim pre-arrest bail already granted to the applicant/ accused vide order dated 09.04.2025 was confirmed on same terms and conditions, by a short order dated 06.11.2025 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