

## **THE HIGH COURT OF SINDH AT KARACHI**

### **Criminal Bail Application No.2098 of 2025**

Applicant : Ashir Ahmed son of Rais Ahmed through M/s. Muhammad Anees and Marina Soomro, Advocates

Complainant : Syed Taqi Abbas son of Syed Nazar Abbas through Mr. Fayaz Hussain Brohi, Advocate

The State : Through Ms. Seema Zaidi, Additional Prosecutor General, Sindh

Date of hearing : 10.12.2025

Date of decision : 10.12.2025

### **O R D E R**

**Jan Ali Junejo, J.** - The present applicant seeks pre-arrest bail in FIR No.899/2022, under Section 489-F PPC registered at Police Station Taimoria, Karachi, calling in question the order dated 12.08.2025 passed by the learned Ist Additional District & Sessions Judge, Karachi (Central), whereby his pre-arrest bail application was dismissed. The Applicant was granted ad-interim pre-arrest bail by this Court vide Order dated: 13-08-2025.

2. The prosecution case, as set out in FIR No.899/2022, is that the complainant allegedly paid an amount of Rs.55,25,000/- to one Raees Ahmed in connection with purchase of a flat. It is alleged that upon demand of refund, six cheques were issued, one of which bearing No.11322954 for Rs.5,00,000/- was dishonoured on presentation. The FIR was registered on 26.08.2022, whereas the alleged occurrence is shown to have taken place on 04.07.2022.

3. Learned counsel for the applicant, argues that the applicant has been falsely implicated with mala fide intention, that the dispute between the parties is purely civil in nature arising out of an alleged property transaction, that there is no privity of contract between the complainant and the present applicant, and that no legally enforceable debt or subsisting liability has been shown against him. He contends that the FIR has been lodged with unexplained delay, that the essential ingredients of

Section 489-F PPC, including dishonest intention and mens rea at the time of issuance of cheque, are completely missing, and that the applicant has joined investigation and has not misused the concession of interim protection; therefore, he prays that the pre-arrest bail be confirmed.

4. Learned counsel for the complainant, on the other hand, argues that the applicant is directly connected with the transaction in question and that the cheque was issued towards discharge of liability which was dishonoured on presentation. He contends that the dishonour of cheque has caused serious financial loss to the complainant, that the applicant is avoiding his liability under the guise of a civil dispute, and that he does not deserve the extraordinary relief of pre-arrest bail; hence, he prays that the application be dismissed.

5. Learned Additional Prosecutor General for the State, argues that the offence is duly reflected from the contents of the FIR and supporting material, that the cheque was dishonoured, and that sufficient *prima facie* material is available to connect the applicant with the commission of the offence. She contends that pre-arrest bail is an extraordinary relief which cannot be granted as a matter of course, particularly where the accused has allegedly misused earlier concessions, and therefore she prays that the present pre-arrest bail application be dismissed.

6. I have given thoughtful consideration to the arguments advanced by the learned counsel for the Applicant, the learned counsel for the Complainant and the learned A.P.G. for the State, and have carefully examined the record with a tentative assessment, as is permissible at the bail stage. It is well settled that pre-arrest bail is an extraordinary relief, intended to protect innocent persons from abuse of the process of law, undue harassment, humiliation, or *mala fide* arrest. At this stage, the Court is not required to undertake a deeper appreciation of evidence; rather, it is to make a tentative assessment of the material available on record. For attracting the provisions of Section 489-F, P.P.C., the prosecution is required, at least *prima facie*, to establish the following essential ingredients: (i) issuance of a cheque by the accused; (ii) issuance of such cheque dishonestly; (iii) existence of a legally enforceable debt, liability, or obligation; (iv) knowledge or mens rea at the time of issuance that the cheque would be dishonoured; and (v) dishonour of the cheque upon its presentation. It is by now settled law that mere dishonour of a cheque, by itself, does not constitute an offence under Section 489-F, P.P.C., unless all the aforesaid ingredients coexist. A careful perusal of the FIR, challan, and annexed material reveals that the complainant does not disclose any

privity of contract between himself and the present applicant. There is no allegation that any amount was paid to the applicant, nor is there any averment of a prior agreement, transaction, or understanding whereby the applicant incurred a legally enforceable debt, liability, or obligation towards the complainant. The prosecution record is silent as to when, where, and in what manner the alleged cheque was issued by the present applicant in discharge of any liability. The mode of transaction, consideration, and foundation of liability have not been disclosed, which are fundamental prerequisites for invoking Section 489-F PPC. Equally significant is the fact that the FIR does not allege any dishonest intention (mens rea) on the part of the present applicant at the time of issuance of the cheque. There is no assertion that the applicant knowingly issued the cheque with the intention that it would be dishonoured. In the absence of such allegation, the essential element of dishonesty, being the soul of Section 489-F PPC, remains unestablished at this stage.

7. In view of the absence of: privity of contract, disclosure of any subsisting debt or liability, and allegation of dishonest intention attributable to the present applicant, the core ingredients of Section 489-F PPC cannot be conclusively determined without recording of evidence. These aspects require deeper probe and proper appreciation at trial. Consequently, the case, so far as the present applicant is concerned, squarely falls within the ambit of "further inquiry" as envisaged under Section 497(2) Cr.P.C.

8. It is further observed that: The FIR has been lodged after a considerable unexplained delay; The alleged transaction appears to be predominantly civil in nature; The offence does not fall within the prohibitory clause of Section 497 Cr.P.C.; and Bail is not to be withheld as a measure of punishment.

9. In similar circumstances where bail was granted in an offence under Section 489-F, P.P.C. i.e., **Ali Anwar Paracha v. The State and another (2024 SCMR 1596)**, the Honourable Supreme Court of Pakistan held that: "*In this view of the matter, the question whether the cheque was issued towards fulfilment of an obligation within the meaning of section 489-F, P.P.C. is a question, which would be resolved by the learned Trial Court after recording of evidence. The petitioner is behind the bars since his arrest. The maximum punishment provided under the statute for the offence under section 489- F, P.P.C. is three years and the same does not fall within the prohibitory clause of section 497, Cr.P.C. It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception*". In another similar offence under Section

489-F, P.P.C., in the case of ***Muhammad Anwar v. The State and another (2024 SCMR 1567)***, the Honourable Supreme Court of Pakistan was pleased to grant bail by observing that: "*In view of the above, the question whether the cheques were issued towards repayment of loan or fulfillment of an obligation within the meaning of Section 489-F, P.P.C. is a question, which would be resolved by the learned Trial Court after recording of evidence. The maximum punishment provided under the statute for the offence under Section 489-F, P.P.C. is three years and the same does not fall within the prohibitory clause of Section 497, Cr.P.C. It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception*".

10. Keeping in view the settled principles of law governing pre-arrest bail, this Court is of the tentative view that the applicant has made out a case for confirmation of pre-arrest bail. Consequently, the ad-interim pre-arrest bail granted to the applicant vide order dated 13.08.2025 in Crime No.899 of 2022, registered at Police Station Taimoria, Karachi, under Section 489-F PPC, is hereby confirmed, subject to the same terms and conditions. The observations herein are tentative and confined to the decision of bail. The trial Court shall not be influenced thereby and shall adjudicate strictly on the evidence led before it. These are the detailed reasons of the Short Order dated: 10.12.2025.

**JUDGE**

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