

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2821 of 2025

Applicant : Javed son of Muhammad Hashim
Through: Mr. Aurangzaib, Advocate

Complainant : Sameer Ahmed, Through: Mr.Liaqat
Ali Awan, Advocate

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

Date of hearing : 16.12.2025

Date of Order : 16.12.2025

ORDER

Jan Ali Junejo, J:-- The Applicant seeks post-arrest bail under Section 497, Code of Criminal Procedure, 1898, in case arising out of FIR No. 382 of 2025 registered at Police Station Kharadar, Karachi, for the offence under Section 489-F PPC. His earlier applications for bail were declined by the learned Judicial Magistrate-XXVI, Karachi South, vide order dated 29-09-2025, and by the learned IInd Additional Sessions Judge, Karachi South, vide order dated 10-10-2025. Being aggrieved, the Applicant has invoked the jurisdiction of this Court.

2. As per the FIR lodged on 30-08-2025, the complainant, a wholesale trader of spices operating as "Sameer Corporation", alleges that during business dealings with "Memon Food", said to be run by accused Javed (Applicant) along with Owais and Mubashir, an outstanding amount accrued during 2023-2025. In purported discharge, multiple cheques were allegedly issued: three

cheques drawn on Meezan Bank by the Applicant and further cheques by co-accused Owais and Mubashir on Soneri Bank. Upon presentation between May-July 2024 and May 2025, the cheques were dishonoured on endorsements including "insufficient funds" and "payment stopped by drawer." After alleged demands and assurances, the FIR was registered on Court's order. The Applicant was arrested and remains in judicial custody; challan has been submitted.

3. Learned counsel for the Applicant contends, inter alia, that the case arises out of a business or commercial dispute devoid of foundational documentation establishing any privity of contract between the complainant and the Applicant, as no written agreement or partnership deed has been produced. He contends that mere dishonour of a cheque, without proof of "dishonest intention" at the time of issuance or evidence that it was issued "towards repayment of a loan or fulfillment of an obligation," does not, by itself, fulfill the ingredients of Section 489-F PPC. He contends that there is an unexplained delay of about four months from the alleged dishonour on 14.05.2025 to the lodgment of the FIR on 30.08.2025, thereby attracting further inquiry under Section 497(2) Cr.P.C. He further contends that the Applicant is not a principal debtor and has been implicated owing to the dealings of his relatives; while signatures on the cheque are not denied, the context, consideration, and underlying obligation remain disputed. He finally contends that the offence does not fall within the prohibitory clause; that pre-trial incarceration amounts to punishment; and that the Applicant,

having no criminal antecedents, is willing to furnish surety and undertakes to appear on all dates and not to tamper with the prosecution evidence. On these grounds, it is prayed that the Applicant be admitted to bail pending trial.

4. Conversely, learned counsel for the complainant, opposes the grant of bail, submitting that the FIR, along with bank deposit slips, bills/cash memos, and WhatsApp exchanges placed before the Courts below, establishes a prima facie commercial liability. He contends that the Applicant's own interrogation statement, as reflected in the police papers, connects him with the delivery of cheques on behalf of the co-accused, thereby demonstrating knowledge and participation. He contends that the dishonour endorsements, "insufficient funds" and "payment stopped by drawer", are reflective of culpable intent. He further contends that the delay in lodging the FIR stands reasonably explained by repeated assurances and false hopes extended to the complainant. He also contends that the magnitude of the alleged loss is substantial and that the rising incidence of cheque-related frauds warrants a firm judicial approach. Lastly, she contends that no mala fides or ulterior motive is attributable to the complainant in instituting the proceedings. It is prayed that the bail application be dismissed.

5. Learned Additional Prosecutor General, while adopting the submissions of the complainant's counsel, further contends that the available material sufficiently connects the Applicant with the

offence; that the allegations require no deeper appreciation at this stage; and that the nature of the accusation, coupled with documentary support, disentitles the Applicant to the concession of bail. She contends that the disputed transaction and competing versions can only be adjudicated upon at trial, whereas at the bail stage the prosecution has shown reasonable grounds to believe in the Applicant's involvement. She therefore prays that the bail plea be refused.

6. I have considered the arguments advanced by the learned counsel for both sides and undertaken a tentative assessment of the material available on record. On such preliminary examination, it appears that a business relationship is alleged; however, its exact contours remain disputed. The prosecution relies on dishonoured cheques and supporting materials such as deposit slips and messages to suggest an underlying obligation. The defence disputes privity and asserts absence of dishonest intention. Whether the cheques were issued towards a legally enforceable obligation and with dishonest intention at the time of issuance are matters that ordinarily require evidence at trial. The settled parameters, as reiterated in binding precedent, are that for an offence under Section 489-F PPC to be made out, the prosecution must establish, inter alia: (a) issuance of a cheque, (b) issuance with dishonest intention, and (c) that such issuance was towards repayment of a loan or fulfillment of an obligation. At this stage, issuance is prima facie shown; however, the presence of dishonest intention and the exact nature of the obligation remain matters for deeper scrutiny. Mere

dishonour is not conclusive of mens rea; surrounding circumstances at the time of issuance are relevant and can only be reliably appraised after recording of evidence. The offence under Section 489-F PPC does not fall within the prohibitory limb of Section 497(1) Cr.P.C. Although it is trite that grant of bail in non-prohibitory offences is not automatic, the general rule is that unless exceptional circumstances exist, such as past criminality, likelihood of absconding, tampering with evidence, or credible allegations of mala fide evasion, concession of bail is to be favourably considered to avoid pre-trial punitive detention.

7. The alleged dishonour on 14-05-2025 and FIR dated 30-08-2025 reflect an interval of about four months. The complainant attributes this to continuing assurances. Whether such explanation is satisfactory is a factual question for trial; nonetheless, the delay, in the absence of any contemporaneous legal notice or criminal complaint immediately following dishonour, supplies an element of doubt that, at the bail stage, tilts towards further inquiry as contemplated by Section 497(2) Cr.P.C. The prosecution asserts existence of bills and chats; the defence disputes privity and legal obligation. No written partnership deed or comprehensive contract has been placed to conclusively bind the Applicant as a partner of "Memon Food". The exact quantum, apportionment of liability inter se among co-accused, and whether the Applicant acted merely as a conduit or as a principal debtor are all questions of fact that necessitate trial.

8. Applicant is remained in judicial custody; investigation stands completed and challan submitted; no further custodial interrogation is shown to be necessary. Appropriate conditions can mitigate apprehensions of abscondence or interference. While cheque dishonour cases impact commercial morality, criminal law is not a substitute for civil recovery. The object of bail is to secure attendance at trial, not to inflict pre-trial punishment. Where the offence is triable by a Magistrate, carries a non-prohibitory sentence, investigation is complete, and material questions of mens rea and enforceable obligation are contested, the case ordinarily qualifies for further inquiry within the meaning of Section 497(2) Cr.P.C. In case 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”*.

9. In light of the above tentative assessment, particularly the non-prohibitory nature of the offence; the disputed questions touching dishonest intention and the nature of obligation; the interval between alleged dishonour and FIR; completion of investigation and submission of challan; absence of demonstrated risk of abscondence or tampering, I am persuaded that the Applicant has made out a case for bail as a matter of further inquiry.

10. Consequently, this Criminal Bail Application is allowed. The Applicant, Javed son of Muhammad Hashim, is admitted to bail pending trial in case arising out of FIR No. 382 of 2025 under Section 489-F PPC, Police Station Kharadar, Karachi, subject to his furnishing solvent surety in the sum of Rs. 100,000/- (Rupees One Hundred Thousand only) and a personal recognizance bond in the like amount to the satisfaction of the trial Court. The observations herein are tentative and confined to the disposal of the bail

application; they shall not prejudice or influence the trial Court in deciding the case on the basis of evidence led before it. These are the detailed reasons of the Short Order dated: 16-12-2025.

JUDGE