

THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2819 of 2025

Applicant : Ali Raza son of Nazar Abas through Mr. Liaquat Ali Awan, Advocate

Complainant : Ali Abbas Son of Aqeel Abbas through Mr. Waqas, Advocate

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

Date of hearing : 19.11.2025

Date of decision : 19.11.2025

O R D E R

Jan Ali Junejo, J.- This is a post-arrest bail application filed by the applicant/accused Ali Raza in FIR No.326 of 2025, registered at Police Station Soldier Bazar, Karachi under Section 489-F PPC. It is noted that earlier the applicant had approached the learned VIth Judicial Magistrate, Karachi East for bail which was declined, whereafter his subsequent bail application was also dismissed by the learned XII-Additional Sessions Judge, Karachi East vide order dated 14.10.2025. Hence, the present bail application has been preferred before this Court.

2. Briefly stated, the prosecution case is that the complainant alleged to have advanced an amount of Rs.65,00,000/- to the applicant for business purposes. In order to discharge the alleged liability, the applicant issued multiple cheques, including cheque No.168383972 for Rs.235,000/- dated 05.11.2024, which upon presentation was dishonored on account of "stop payment". Despite repeated demands, the applicant allegedly failed to make payment, whereafter the FIR was lodged.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated in the present case. It was argued that the dispute is purely civil in nature and arises out of private financial dealings. The cheques were not issued in discharge of any legally enforceable liability but were allegedly given as security in connection with payments relating to Roomi Builder. It was further argued that no documentary proof such as loan agreement, receipt,

acknowledgment or business record has been produced by the complainant. It was also emphasized that the cheque was dishonored due to "stop payment" and not due to insufficiency of funds. Learned counsel further pointed out that there is an unexplained delay of about five months in lodging of the FIR. Lastly, it was prayed that as the offence does not fall within the prohibitory clause of Section 497 Cr.P.C., the applicant is entitled to the concession of bail.

4. Learned counsel for the complainant opposed the bail application on the ground that the applicant has admitted issuance and signatures on the cheque. It was argued that a huge amount is involved and the applicant has committed financial murder of the complainant. It was further contended that the cheques were issued towards repayment of liability and that the defence version is an afterthought. Learned counsel prayed for dismissal of the bail application.

5. Learned Additional Prosecutor General, Sindh, adopted the arguments advanced by the complainant's counsel and further contended that sufficient material exists connecting the applicant with the commission of the alleged offence. It was argued that the element of mens rea is apparent from the act of stopping payment of the cheque and the earlier dismissal of bail was justified. Prayer was made for dismissal of the bail application.

6. I have heard the learned counsel for the parties and perused the available record with due care and circumspection. At the bail stage, only a tentative assessment is required. Perusal of record shows that admittedly no written business agreement, loan document, receipt, acknowledgment or partnership deed has been placed on record by the complainant in support of the alleged transaction of Rs.65,00,000/-. The transaction appears to be purely private in nature. In such circumstances, the dispute *prima facie* appears to be civil, and criminal liability is yet to be determined through trial.

7. The bank memo reflects that the cheque was dishonored due to "stop payment" and not due to insufficiency of funds. At this stage, it cannot be conclusively determined whether the cheque was issued with dishonest intention to defraud the complainant, which is the essential ingredient of Section 489-F PPC. Moreover, the incident allegedly occurred in April 2025 whereas the FIR was lodged in September 2025, after an unexplained delay of about five months, which adversely affects the spontaneity and credibility of the prosecution story at this stage.

8. The offence under Section 489-F PPC carries a maximum punishment of three years and does not fall within the prohibitory clause of Section 497 Cr.P.C. No recovery is required to be effected from the applicant and the investigation is already complete. There is also no material on record to show that the applicant is likely to abscond or tamper with the prosecution evidence. In non-prohibitory offences, bail is a rule and refusal is an exception. The case, at the present stage, appears to be one of 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. The failure to satisfy the complainant's financial claim, which is the very subject matter of the dispute, cannot be made a ground to deny the concession of bail. To hold otherwise would amount to converting the bail process into a debt recovery mechanism, which is wholly alien to the spirit of criminal jurisprudence. In similar circumstances, the Honourable Supreme Court of Pakistan in the case of **Abdul Rasheed v. The State and another (2023 SCMR 1948)** has held that: *"Even otherwise, even if the complainant wants to recover his money, 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".

10. For the foregoing reasons, this Criminal Bail Application is allowed and the applicant/accused Ali Raza son of Nazar Abbas is admitted to bail in FIR No.326 of 2025, under Section 489-F PPC, registered at Police Station Soldier Bazar, Karachi, subject to furnishing solvent surety in the sum of Rs.100,000/- and P.R. bond in the like amount to the satisfaction of the learned Trial Court. Needless to observe that the above observations are tentative in nature and shall not prejudice the case of either party at trial. These are the detailed reasons of the Short Order dated: 19-11-2025.

JUDGE

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