

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS
Crl. Bail Application No.S-126 of 2025

Applicant/ accused: Tayab Khan s/o Muhammad Ali Unner
Through Mr. Sikander Ali Kolachi advocate.

The State: Through, Mr. Ghulam Abbas Dalwani, D.P.G.

Complainant: Muhammad Younus s/o Muhammad Yousuf Khatak
Through Mr. Sarfraz Ahmed advocate.

Date of hearing: 23.06.2025

Date of Order: 23.06.2025

ORDER.

Jan Ali Junejo, J. – The present application for pre-arrest bail has been filed by the Applicant Tayab Khan following the dismissal of his earlier pre-arrest bail application (Bail Application No. 238/2025) by the learned Additional Sessions Judge-I/MCTC, Sanghar, vide order dated 30-04-2025. Ad-interim pre-arrest bail was granted to the applicant by this Court vide order dated 15-05-2025.

2. The case arises out of F.I.R. No. 30 of 2025, lodged by the complainant, Muhammad Younis, at Police Station Sanghar. According to the contents of the FIR, the complainant is engaged in the business of agricultural pesticides, seeds, and fertilizers at Sattar Chowk, Gujri. The applicant, stated to be a landlord by occupation, had been procuring these agricultural inputs on credit from the complainant over a period of approximately two years. Following the settlement of accounts, a sum of Rs. 320,200/- was found to be outstanding against the applicant. In purported discharge of this liability, the applicant is alleged to have issued Cheque No. 67796639 dated 13-01-2025, in the amount of Rs. 320,200/-, drawn on Account No. PK85JSBL9536000001791549 maintained at JS Bank, Sanghar Branch. The complainant presented the said cheque for encashment through his account maintained at Bank Al-Habib, Sanghar Branch,

on due date. However, the cheque was dishonoured due to insufficient funds. Despite repeated demands, the applicant allegedly failed to make payment of the outstanding amount, which ultimately led to the registration of the present FIR under Section 489-F of the Pakistan Penal Code.

3. Mr. Sikander Ali Kolachi, learned counsel for the applicant, vehemently argued that his client has been falsely implicated in this case with malafide intentions by the complainant. He emphasized that the FIR was lodged with an inordinate and unexplained delay of 5 months and 2 days, which casts serious doubt on the veracity and genuineness of the allegations. He submitted that the applicant is an illiterate and indigent individual with no previous criminal record, who has been made a scapegoat in this matter. He forcefully contended that the alleged offence under Section 489-F PPC does not fall within the prohibitory clause of Section 497(1) Cr.P.C., as it is not punishable with death, imprisonment for life, or imprisonment for ten years. He drew the court's attention to considerable contradictions between the contents of the application under Section 22-A & B Cr.P.C and the contents of the FIR, which demonstrate the fabricated nature of the case. He argued that the cheque in question was given to the complainant merely as security and not against any specific transaction or outstanding amount. He further submitted that the complainant has malafidely concealed material facts regarding the actual settlement of accounts, and that after proper calculation and consideration of the rice crop produce and sales, an amount of Rs. 473,300/- is actually due to the applicant from the complainant. He contended that the complainant, being influenced by greed and dishonesty, is attempting to usurp the rightful income of the applicant through false allegations. He concluded by asserting that the case clearly requires further inquiry under Section 497(2) Cr.P.C, and prayed for the grant of pre-arrest bail to his client.

4. Mr. Sarfraz Ahmed, learned counsel for the complainant, vehemently opposed the bail application by arguing that the applicant dishonestly and deliberately issued the cheque to the complainant with full knowledge that it would be dishonoured due to insufficient funds in his account. He contended that the applicant has himself admitted to conducting business transactions with the complainant over a period of two years, thereby establishing the commercial relationship and the basis for the outstanding amount. He argued that there is absolutely no malafide intention on the part of his client, who is a genuine businessman running a legitimate agricultural supplies business, and who has suffered financial loss due to the fraudulent conduct of the applicant. He submitted that the applicant, being a landlord, deliberately misused the trust and goodwill of the complainant by issuing a worthless cheque, knowing fully well that he did not have sufficient funds in his account. He emphasized that fraud has been committed by the applicant against the complainant, and that the case does not warrant the extraordinary relief of pre-arrest bail, particularly when no malafide has been established on the part of the complainant. He further argued that the applicant's contentions regarding settlement of accounts are afterthoughts and fabrications designed to escape liability. He concluded by praying for the dismissal of the instant bail application and requested that the applicant be made to face the consequences of his dishonest actions.

5. Mr. Ghulam Abbas Dalwani, learned Deputy Prosecutor General representing the State, while adopting and supporting the submissions made on behalf of the complainant, contended that all the essential ingredients of Section 489-F PPC are clearly present and established in the instant case. He argued that the applicant dishonestly issued the cheque for the discharge of his debt and liability, knowing fully well that the cheque would be dishonoured upon presentation. He submitted that the cheque was duly presented to the bank and was dishonoured due to insufficient funds, which constitutes a clear violation of

Section 489-F PPC. He contended that the prosecution has sufficient evidence to establish the guilt of the applicant, including the original dishonoured cheque, the bank memo indicating insufficient funds, and the testimony of witnesses. He argued that the matter does not require any further inquiry as suggested by the defence, since the documentary evidence is clear and unambiguous. He further submitted that the applicant's claims of giving the cheque as security and the alleged counter-claims are mere afterthoughts designed to create confusion and delay the process of justice. He emphasized that the State has a duty to protect the interests of genuine complainants and to ensure that commercial transactions are conducted with honesty and integrity. He concluded by requesting the Court to dismiss the bail application and allow the law to take its course against the applicant.

6. I have carefully considered the arguments advanced by the learned counsel for the applicant, the learned counsel for the complainant, and the learned Deputy Prosecutor General representing the State. I have also thoroughly examined the material available on record and conducted a tentative assessment, as permissible at the bail stage, in accordance with established legal principles. Since the applicant seeks bail in respect of an offence under Section 489-F of the Pakistan Penal Code (PPC), it is pertinent to examine the scope and requirements of this provision. Section 489-F PPC pertains to the dishonest issuance of a cheque for the discharge of a debt or other liability, with the knowledge that the cheque will be dishonoured upon presentation. The essential ingredients of this offence are:

- Dishonest issuance of a cheque;
- Issuance made for the discharge of a debt or other liability;
- Knowledge on the part of the issuer that the cheque will be dishonoured; and
- Actual dishonour of the cheque.

Section 489-F PPC prescribes a punishment of up to three years' imprisonment, along with fine. Consequently, the offence does not fall within the prohibitory clause of Section 497(1) of the Code of Criminal Procedure (Cr.P.C.). In such circumstances, the general principle is that grant of bail is the rule, while refusal is the exception. Bail may be denied only where it is established that the accused is: (a) likely to abscond to evade the process of law; (b) may tamper with the prosecution evidence or influence witnesses, thereby obstructing justice; or (c) has a prior criminal record or is likely to reoffend, considering the nature or manner of the alleged offence. However, in the present case, no such exceptional circumstances appear to exist. The legal principle that bail should ordinarily be granted in cases not falling within the prohibitory clause has been reaffirmed in Cases of *Tariq Bashir & 5 others v. The State (PLD 1995 SC 34)* and *Muhammad Tanvir v. The State (PLD 2017 SC 733)*.

7. There is a substantial delay of one month and five days in the lodging of the FIR, for which no satisfactory explanation has been, prima facie, provided as per contents of the F.I.R. This unexplained delay raises doubts and renders the case of the applicant one that calls for further inquiry. Furthermore, the applicant has no prior criminal record and is described as a law-abiding citizen, which tilts the balance in favor of the grant of bail. It is now a well-settled principle of law that the mere dishonour of a cheque does not automatically attract penal consequences under Section 489-F of the Pakistan Penal Code. For an offence under this provision to be constituted, the foundational elements must be clearly established i.e., that the cheque was issued with dishonest intent and that it was intended to discharge an outstanding loan or a legally enforceable obligation. This legal position has been affirmed by the Honourable Supreme Court of Pakistan in *Muhammad Anwar v. The State (2024 SCMR 1567)*, wherein it was held that: "*This Court has held in the case titled Mian Allah Ditta, that every transaction where a cheque is dishonoured may not constitute an offense. The foundational*

elements to constitute an offense under this provision are the issuance of the cheque with dishonest intent, the cheque should be towards repayment of loan or fulfillment of an obligation, and lastly that the cheque is dishonoured". Upon initial review of the record, it appears that the complainant and the applicant were engaged in a commercial transaction where the applicant obtained pesticides, seeds, and fertilizer on credit. The dispute seems to have arisen from the settlement of accounts related to these supplies. Notably, there is no allegation of fraudulent misrepresentation or dishonest intent at the inception of the transaction. The alleged liability arises from a business dealing involving the supply of agricultural inputs on credit, and the dispute centers on the reconciliation or recovery of dues. This suggests that the matter, prima facie, assumes a civil nature rather than a criminal one. It is a well-established principle that criminal proceedings under Section 489-F PPC cannot be used as a means to recover disputed amounts or substitute civil remedies. The Honourable Supreme Court of Pakistan has affirmed this proposition in ***Abdul Rasheed v. The State (2023 SCMR 1948)***, wherein it was observed 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. 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".* However, the essential ingredients of the offence under Section 489-F, P.P.C., particularly the existence of a legally enforceable obligation and the issuance of the cheque with dishonest intention, are yet to be conclusively determined and can only be properly

examined at the time of trial. The presence or absence of *mens rea*, being a foundational element of the offence, requires deeper judicial scrutiny, which is not possible at the bail stage.

8. After careful consideration of the submissions advanced by the learned counsel for all parties and a tentative assessment of the material available on record, this Court is of the view that the present case does not fall within the prohibitory clause of Section 497(1) of the Code of Criminal Procedure (Cr.P.C.). There exist reasonable grounds to believe that the case warrants further inquiry within the meaning of Section 497(2) Cr.P.C. The considerable delay in the registration of the FIR, coupled with inconsistencies in the prosecution's narrative, casts serious doubt on the veracity of the allegations. Additionally, the applicant has no prior criminal record and does not appear to be a flight risk. In view of the foregoing analysis and the cumulative circumstances of the case, this Court is satisfied that the applicant has made out a case for the grant of pre-arrest bail and is thus entitled to the concession sought.

9. For the reasons stated hereinabove, the interim pre-arrest bail earlier granted to the applicant vide order dated 15-05-2025 is hereby **confirmed**, subject to the same terms and conditions. It is further clarified that all observations made herein are tentative in nature, based solely on the material available at the bail stage. These shall not prejudice the trial Court or affect the merits of the case of either party during the course of trial proceedings.

JUDGE

Faisal