

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail. Application No.S-54 of 2026
[Kamal versus The State]

Applicant by: Mr. Irfan Khaskheli advocate
Complainant by: Nemo
State by: Mr. Irfan Ali Talpur D.P.G
Date of hearing 23.06.2026
Date of Order 23.06.2026

ORDER

TASNEEM SULTANA, J: Through the instant application, applicant Kamal seeks pre-arrest bail in Crime No.166 of 2025 registered at P.S Bhatt Shah under Section 489-F PPC. His earlier bail application for the same relief being CrI. Bail Application No.23 of 2026 has been declined by the Additional Sessions Judge Hala vide Order dated 13.01.2026.

2. Brief facts of the prosecution case are that on 25.12.2025 the complainant appeared at Police Station Bhatt Shah along with order dated 16.12.2025 passed by the learned Ex-Officio Justice of Peace and reported that he had old relations with the applicant, who was running a car showroom at Badin City. It was alleged that on the advice of the applicant, the complainant invested Rs.23,00,000/- in the applicant's car showroom business on profit basis; however, the applicant failed to pay profit and, upon demand, issued three cheques dated 05.01.2025, i.e. cheque No.87210453 for Rs.16,00,000/-, cheque No.87210464 for Rs.3,00,000/- and cheque No.87210468 for Rs.4,00,000/-. Out of the said cheques, two cheques amounting to Rs.19,00,000/- were presented before the bank on 12.05.2025, but were returned dishonoured due to insufficient funds; hence, the FIR was lodged

3. Learned counsel for the applicant contends that the applicant is innocent and has been falsely implicated; that the FIR has been lodged with unexplained delay; that no such transaction, as alleged by the complainant, ever took place; that in fact the applicant had joined a committee/VC with the complainant and had handed over three blank cheques as security, which have subsequently been misused; that no civil proceedings for recovery of the alleged amount have been initiated by the complainant; that the offence does not fall within the prohibitory clause of Section 497, Cr.P.C.; that the case calls for further inquiry; and that the applicant is ready to face trial. He lastly submits that the interim pre-arrest bail granted to the applicant may be confirmed.

4. On 11.05.2026, the complainant appeared and stated that he would argue the matter himself; however, thereafter he chose to remain absent. Conversely, learned D.P.G. opposes the bail application and contends that the applicant issued the cheques in question, which were dishonoured due to insufficient funds; that the cheques were issued against an existing liability; that the defence plea requires evidence and cannot be considered at bail stage; that mala fide on the part of the applicant is apparent from the record; and that the applicant is not entitled to the extraordinary relief of pre-arrest bail.

5. Heard. Record perused.

6. The record reflects that the allegation against the applicant is of issuing cheques to the complainant, which, on presentation, were dishonoured due to insufficient funds. The claim of the complainant, however, revolves around an amount allegedly invested in the car showroom business of the applicant on profit basis. Thus, the transaction between the parties carries a civil and commercial complexion.

7. Mere issuance of a cheque and its dishonour by itself is not sufficient to attract Section 489-F, PPC, unless dishonest intention at the time of issuance of such cheque is shown. Whether the cheques in question were issued dishonestly towards discharge of a legally enforceable obligation, or whether the same were connected with disputed business dealings between the parties, is a question requiring further inquiry within the meaning of Section 497(2), Cr.P.C.

8. The record further reflects that the cheques were stated to have been issued on 05.01.2025 and were presented before the bank on 12.05.2025, whereas the FIR was lodged on 25.12.2025 after obtaining an order from the learned Ex-Officio Justice of Peace dated 16.12.2025. Thus, there was considerable delay in setting the criminal law into motion, and no satisfactory explanation has been furnished for such delayed recourse to criminal proceedings.

9. It may also be observed that Section 489-F, PPC is not intended to be used as a tool for recovery of an alleged amount. For recovery of money, civil remedy is available under the law, including proceedings under Order XXXVII, C.P.C. At bail stage, this Court cannot determine the validity, extent or enforceability of the alleged business transaction between the parties, particularly when the dispute is based on documentary evidence and requires deeper appreciation.

10. Furthermore, the offence under Section 489-F, PPC carries 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 offences not falling within the prohibitory clause, grant of bail is a rule and refusal is an exception. Reliance in this regard may beneficially be placed upon Abdul Rasheed v. The State (2023 SCMR 1948), wherein the Honourable Supreme Court observed as under:

“Even otherwise, even if the complainant wants to recover his money, Section 489-F of PPC 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 the loan or fulfilment of an obligation within the meaning of Section 489-F PPC 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 PPC 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 offences not falling within the prohibitory clause is a rule and refusal is an exception.”

11. Similarly, in Abdul Saboor v. The State through A.G. KPK and another (2022 SCMR 592), the Honourable Supreme Court observed that the offence under Section 489-F, PPC does not fall within the prohibitory clause of Section 497, Cr.P.C. and that, since the maximum punishment provided thereunder is three years, bail should generally be granted rather than refused. It was further emphasized that Section 489-F, PPC is not intended to serve as a tool for monetary recovery, which lies within the domain of civil remedy.

12. In view of the above facts and circumstances, the applicant has made out a case for confirmation of interim pre-arrest bail. Consequently, the instant bail application is allowed and the interim pre-arrest bail granted to the applicant vide order dated 15.01.2026 is hereby confirmed on the same terms and conditions.

13. Needless to mention that the observations made hereinabove are tentative in nature and shall not influence the learned trial Court while deciding the case on merits

JUDGE