

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Crl. Bail Application No.S-181 of 2026

(Muhammad Irfan and another vs. The State)

Applicants : 1. Muhammad Irfan s/o Momi.
2. Rashid Ali s/o Rafi Muhammad
Through Mr. Munawar Ali Abro, Advocate.

Respondent : The State
Through Mr. Dhani Bakhsh Mari, Assistant P.G.

Complainant : Mr. Riaz Ahmed s/o Khair Muhammad
Through Mr. Rana Raheel Mehmood Rajput, Advocate.

Date of hearing : 05.10.2026

Date of Order : 05.10.2026

ORDER

RIAZAT ALI SAHAR, J: Through the instant bail application, applicants Muhammad Irfan son of Momi and Rashid Ali son of Rafi Muhammad seek confirmation of pre-arrest bail under Section 498 Cr.P.C. in Crime No.20 of 2026, registered at Police Station Taluka, Mirpurkhas, for offences punishable under Sections 489-F, 420 and 34 PPC. Their earlier application for pre-arrest bail was dismissed by the learned Additional Sessions Judge-I, Mirpurkhas, vide order dated 08.04.2026, whereafter they invoked the jurisdiction of this Court.

2. In view of **P L D 2014 S C 458** (*Muhammad Shakil v. The State*) the facts and particulars of the prosecution case are already set out in the FIR, a copy whereof is available on record; therefore, unnecessary reproduction thereof is avoided.

3. Learned counsel for the applicants contends that the applicants are innocent and have been falsely implicated by the complainant with mala fide intention and for ulterior motives. He submits that the FIR was lodged after an unexplained delay of one month and two days; that the cheque in question was issued merely as security in connection with a transaction relating to sale/purchase of a vehicle; and that the complainant subsequently misused the said cheque to give a criminal colour to what is essentially a civil/business dispute. He further submits that the offences alleged do not fall within the prohibitory clause of Section 497(1) Cr.P.C.; the investigation has already been

completed; and the applicants are no longer required for investigation. He, therefore, prays for confirmation of their interim pre-arrest bail.

4. Conversely, learned counsel for the complainant has vehemently opposed the application. He contends that applicant Muhammad Irfan, in furtherance of the common intention of the applicants, dishonestly issued the cheque towards discharge of an existing liability, which, upon presentation, was dishonoured. According to him, the material available on record sufficiently reflects dishonest intention on the part of the applicants, whereas no mala fide has been established against the complainant so as to justify the extraordinary relief of pre-arrest bail. He, therefore, prays for dismissal of the application.

5. Learned Assistant Prosecutor General, while adopting the submissions advanced on behalf of the complainant, contends that the essential ingredients of Sections 489-F and 420 PPC are, prima facie, attracted. He submits that the prosecution possesses the dishonoured cheque, the relevant bank memo and other supporting material which, according to him, connect the applicants with the commission of the alleged offences. He accordingly opposes confirmation of bail.

6. I have heard the learned counsel for the parties as well as the learned Assistant Prosecutor General and have tentatively examined the material available on record, as is permissible at the bail stage. Since the principal allegation revolves around dishonour of a cheque, it would be appropriate to advert to the essential ingredients of Section 489-F PPC. To attract the said provision, the prosecution is required to establish that: (i) the cheque was issued; (ii) it was issued dishonestly; (iii) it was issued towards repayment of a loan or fulfillment of an obligation; and (iv) it was dishonoured upon presentation. Thus, mere issuance and subsequent dishonour of a cheque, by themselves, would not invariably constitute an offence under Section 489-F PPC unless the remaining foundational ingredients are also shown to exist. It is equally significant that the offences under Sections 489-F and 420 PPC do not fall within the prohibitory clause of Section 497(1) Cr.P.C. In offences falling outside the prohibitory clause, grant of bail is the rule and refusal an exception, unless exceptional circumstances exist, such as likelihood of abscondence, tampering with prosecution evidence, influencing witnesses, repetition of the offence, or some other circumstance demonstrating that release of the accused would defeat the administration of justice. Reference in this regard may appropriately be made to *Tariq Bashir and 5*

others v. The State (PLD 1995 SC 34) and *Muhammad Tanvir v. The State (PLD 2017 SC 733)*.

7. Reverting to the facts of the present case, the FIR was lodged after a delay of approximately one month and two days. Prima facie, no satisfactory explanation for such delay is discernible from the contents of the FIR. Though delay by itself may not be sufficient to discard the prosecution case, it remains a relevant circumstance for tentative assessment at the bail stage, particularly when considered alongside the nature and background of the transaction between the parties. The material presently available further indicates that the dispute originated from a transaction concerning the sale/purchase of a vehicle. The defence has specifically taken the plea that the cheque was furnished as security in connection with that transaction and was subsequently misused. Whether the cheque was in fact issued as security or towards discharge of an existing and legally enforceable obligation is a question that cannot appropriately be determined conclusively at this stage and would require evidence to be recorded by the trial Court. The Honourable Supreme Court in *Muhammad Anwar v. The State (2024 SCMR 1567)* reiterated that every transaction involving dishonour of a cheque does not necessarily constitute an offence under Section 489-F PPC; rather, the prosecution must establish the foundational requirements of dishonest issuance and that the cheque was issued towards repayment of a loan or fulfillment of an obligation. Similarly, in *Abdul Rasheed v. The State (2023 SCMR 1948)*, the Honourable Supreme Court reiterated that Section 489-F PPC is not intended to operate as a mechanism for recovery of an alleged amount and that the question whether a cheque was issued towards repayment of a loan or fulfillment of an obligation may, depending upon the circumstances, require determination by the trial Court after recording evidence. In the present case, the nature of the underlying transaction, the purpose for which the cheque was issued, the existence and extent of the alleged liability, and the element of dishonest intention are matters requiring deeper examination at trial. Likewise, insofar as Section 420 PPC is concerned, the prosecution would be required to establish the requisite dishonest or fraudulent intention constituting cheating. Whether such intention existed at the relevant time is also a matter which, in the peculiar circumstances of the case, cannot safely be determined against the applicants merely on the basis of the material presently available.

8. It is also pertinent that the investigation has already been completed and no material has been brought to the notice of this Court showing that the applicants are required for any further investigative purpose. There is also nothing presently available to suggest that they have previously misused the concession of interim bail, attempted to abscond, tampered with the prosecution evidence, or influenced the witnesses. Although pre-arrest bail is an extraordinary relief and is not to be granted as a matter of course, the Court is nevertheless required to examine whether, in the peculiar circumstances of the case, arrest would serve any useful purpose or would merely operate as an instrument of humiliation or unnecessary restraint. At this stage, the unexplained delay in lodging the FIR, the commercial nature of the underlying transaction, the defence plea regarding issuance of the cheque as security, the absence of any allegation of misuse of interim bail, and the fact that the alleged offences fall outside the prohibitory clause cumulatively bring the matter within the ambit of further inquiry under Section 497(2) Cr.P.C.

9. For the foregoing reasons, and without expressing any final opinion on the merits of the case, the applicants have succeeded in making out a case for confirmation of pre-arrest bail. Consequently, the interim pre-arrest bail granted to applicants Muhammad Irfan and Rashid Ali vide order dated 22.04.2026 is hereby **confirmed** on the same terms and conditions.

10. Needless to observe that the findings and observations recorded herein are purely tentative in nature and confined to the disposal of the instant bail application.

11. The learned trial Court shall decide the case strictly on the basis of the evidence brought before it, independently and without being influenced by any observation contained in this order.

The instant bail application stands **allowed** accordingly.

JUDGE

The applicants, Muhammad Irfan s/o Momi and Rashid Ali s/o Rafi Muhammad, seek pre-arrest bail under Section 498 Cr.P.C in F.I.R bearing Crime No.20 of 2026 registered at Police Station Taluka, Mirpurkhas, for offences under Sections 489-F, 420, 34 PPC. Their earlier bail plea was declined by the learned Additional Sessions Judge-I, Mirpurkhas, vide order dated 08-04-2026, after which they invoked the jurisdiction of this Court.

2. The details and particulars of the FIR are already available in bail application and the F.I.R, as such need not be re-produced herein under.

3. Learned counsel for the applicants contended that applicants are innocent and have been falsely implicated by the complainant in this case with malafide intention and ulterior motive; that F.I.R is delayed by one month and two days without any plausible explanation; that the alleged cheque was issued as security in the sale/purchase transaction of vehicle; that complainant has misused the said cheque and lodged instant false F.I.R; that alleged offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C; that investigation has been completed and applicants are no more required for investigation. Lastly he prayed for confirmation of bail to the applicants.

4. Learned counsel for the complainant vehemently opposed the bail application by arguing that applicant Muhammad Irfan, in furtherance of common intention, dishonestly and deliberately issued cheque to the complainant which was dishonoured; that there is absolutely no malafide intention on the part of the complainant; that fraud has been committed by the applicants with 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 concluded by praying for the dismissal of the instant bail application.

5. Learned Assistant 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 and 420 PPC are clearly present and established in the instant case. 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 applicants, including the original dishonoured cheque, the bank memo indicating insufficient funds, and the testimony of witnesses. He concluded by requesting the Court to dismiss instant bail application.

6. I have carefully considered the arguments advanced by learned counsel for the applicants, the learned counsel for the complainant, and the learned Assistant 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 applicants seek bail mainly 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.

Both section i.e. 489-F and 420 PPC applied in the F.I.R do 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 two days in the lodging of the F.I.R, 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 applicants one that calls for further inquiry. Furthermore, the applicants have no prior criminal record and are described as law-abiding citizens, which tilt 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 as under:

“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 applicants were engaged in sale/purchase of vehicle. 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 sale/purchase transaction of car, 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 the case of *Abdul Rasheed v. The State (2023 SCMR 1948)*, wherein it was observed as under:

“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 and the ingredients of the offence under Section 420 PPC., regarding cheating, 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 business transaction between the parties, casts serious doubt on the veracity of the allegations. Additionally, the applicants have no prior criminal record and do 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 applicants have 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 applicants vide order dated 22-04-2026 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.

The instant bail application is disposed of accordingly.

JUDGE

Saleem