

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

Crl. Bail Application No. 188 of 2023

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**DATE**

**ORDER WITH SIGNATURE OF JUDGES**

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For hearing of bail application.

**07-04-2023**

Mr. Al-Qamah Bin Mehmood, Advocate for applicant.  
Mr. Talib Ali Memon, APG.

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**Omar Sial, J:** Syed Mushtaq Hussain has sought pre-arrest bail in crime number 337 of 2021 registered under section 489-F P.P.C. at the Sachal police station. Earlier, his applications seeking bail was dismissed by the learned 1<sup>st</sup>. Additional Sessions Judge, Malir, Karachi 20.01.2023.

2. A background to the case is that the aforementioned F.I.R. was registered on 04.03.2021 on a complaint made by Tariq Ahmed Khan who reported an incident that occurred on 06.07.2020. Tariq reported that he gave an amount of Rs. 6,700,000 to the applicant for the purchase of a plot but that the applicant did not get him the plot. When Tariq asked for his money back, a cheque was given to him for an amount of Rs. 1,000,000, which bounced when presented at the bank's counters the same day.

3. I have heard the learned counsel for the applicant as well as the learned APG. None effected an appearance on behalf of the complainant despite notice.

4. The learned APG confirms that there is no evidence on the police file which would evidence the sale transaction that is alleged in the F.I.R. I notice however that a copy of an agreement to sell has been put on record by the applicant himself dated 19.02.2020 which prima facie shows that a sale-purchase of property was envisaged by the parties. The agreement at page 2 prima facie shows that the disputed cheque was given with the date of 20.03.2020. The counsel for the applicant has explained that the post dated cheque was given with the understanding that the complainant will

make available the original property file. As the complainant did not provide the requisite papers, and indeed has not done so till this date, the transaction was called off. The complainant, according to the applicant's counsel, with malafide intent deposited the cheque after the transaction had been called off. Be that as it may, the truth of the matter will be unearthed by the learned trial court after it has had an opportunity to evaluate the evidence produced before it. In view of the foregoing, it is still to be determined as to whether the cheque was given by the applicant for the fulfillment of an obligation or satisfaction of a loan, as required by section 489-F P.P.C., making the case against the applicant one of further inquiry.

5. I also notice from the impugned order that the applicant had already been granted a confirmed pre-arrest bail by the trial court and that because of 2 absences at trial, the same was recalled. The applicant has explained that he had had a heart attack and as he was admitted to the hospital he was unable to attend the hearings but that he had instructed his counsel to file the requisite applications seeking condonation of his absence. He has put on record such applications. In my view the learned trial court was correct when it recalled the bail on the applicant's absence. It however appears to me that the learned trial court may not have been effectively informed of the ailment of the applicant nor did the counsel produce any medical documents to substantiate his assertion before it. Of course, such conduct would lead to cancellation of a bail. I have however taken a lenient view as I feel that the applicant's absence may not have been intentional and caused as a consequence of ineffective representation.

6. An offence under section 489-F carries a potential sentence of up to 3 years and although not bailable falls within the non-prohibitory clause of section 497 Cr.P.C. Keeping in mind the principles enunciated in *Tariq Bashir and 5 others vs The State* (PLD 1995 SC 34), I do not see any exceptional or extraordinary grounds to decline the bail application.

7. Above are the reasons for the short order dated 05.04.2023. It is however clarified that in the event the applicant continues to remain absent at trial without any cogent explanation, or demonstrates conduct designed to delay proceedings, the learned trial court itself shall be empowered to cancel the bail being granted by this court.

JUDGE