

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS**

Crl. Bail Application No.S-157 of 2024
(*Muhammad Asad Vs. The State*)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing & Order 25.09.2024

Mr. Dilawar Hussain Panhwar, advocate a/w applicant.
Mr. Dhani Bakhsh Mari, Assistant Prosecutor General Sindh.
Nemo for the complainant.
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ORDER

Adnan-ul-Karim Memon, J. Applicant Muhammad Asad is seeking pre-arrest bail in Crime No. 103/2024 P.S Satellite Town, under section 489-F & 420 P.P.C. His earlier bail plea has been declined by the learned Additional Sessions Judge,-I, Mirpurkhas vide order dated 10.07.2024 on the premise that the applicant/accused has not denied issuing the cheque or its dishonor. He has also admitted to not filing a civil suit for cancellation of the cheque, despite claiming to have already paid the amount and registered his house in the complainant's name. This suggests a prima facie connection to the crime and makes him ineligible for pre-arrest bail.

2. The learned advocate for the applicant argued that the FIR was filed nine months after the alleged incident without any reasonable explanation. He further claimed that the applicant had given property to the complainant and received money in return, with documents and a cheque as security. Despite paying back the money, the complainant refused to return the cheque. The advocate argued that the complainant had invested the money in a business that closed in 2022. He also stated that the applicant had already registered his house in the complainant's name but demanded the cheque back before transferring possession. The advocate claimed that the complainant became dishonest and filed the FIR to blackmail the applicant. He argued that the offenses did not fall under the prohibitory clause of section 497 Cr.P.C. and requested that the bail application be granted and interim pre-arrest bail be confirmed. To support his arguments, he submitted a copy of the plaint of F.C. Suit No.

75/2024 and other relevant documents. Learned counsel pointed out that the trial is on the verge of conclusion and only I.O is required to be examined, therefore, no fruitful result would come by sending the applicant behind bars for an indefinite period. He prayed for confirmation of the bail.

3. None present on behalf of the complainant though he has been served. However, the learned APG has opposed the bail and supported the impunged order.

4. I have heard learned counsel for the applicant as well as learned APG and perused the material available on the record.

5. The Supreme Court has held in the recent judgment that every transaction where a cheque is dishonored 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 a loan or fulfillment of an obligation, and lastly, the cheque is dishonored. Even otherwise, even if the complainant wants to recover his money, Section 489-F of PPC is not a provision that is intended by the Legislature to be used for recovery of an alleged amount.

6. In view of the above, the question is whether the cheque was issued towards repayment of the loan or fulfillment of an obligation within the meaning of Section 489-F PPC is a question, that would be resolved by the learned Trial Court after the recording of evidence.

7. The maximum punishment provided under the statute for the offense 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 for offenses not falling within the prohibitory clause is a rule and refusal is an exception.

8. It is now settled that to err in granting bail is better than to err in declining; for the ultimate conviction and sentence of a guilty person can repair the wrong caused by a mistaken relief of bail, but no satisfactory reparation can be offered to an innocent person on his acquittal for his unjustified imprisonment during the trial.

9. The trial is on the verge of conclusion and only Investigating Officer is required to be examined.

10. For the above reasons, this bail application is allowed, and the interim pre-arrest bail already granted to the applicant vide order dated 19.07.2024 is hereby confirmed on the same terms and conditions. Learned trial court is directed to examine the Investigating Officer within 15 days. The observation is tentative.

JUDGE

Ali Sher