IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Bail Application No.S-37 OF 2025

Date of hearing	Order with signature of Judge

For hearing of bail application.

Date of hearing. **17.02.2025**
Date of order. **17.02.2025**

Mr. Sheeraz Fazal, advocate for the applicant
Mr. Miran Bux Shar, advocate for complainant
Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General for the State.

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O R D E R

Riazat Ali Sahar, J. Through the instant bail application, the applicant/accused Muhammad Amb, son of Abdul Kareem, by caste Manganhar, seeks pre-arrest bail in Crime No. 178 of 2024, registered under section 489-F, PPC, at Police Station Faiz Gunj. Previously, the applicant had filed a similar application for the grant of pre-arrest bail, which was dismissed by the learned Additional Sessions Judge-III, Khairpur, vide order dated 28.09.2023. Consequently, he has now preferred the present bail application.

2. The earlier bail plea of the applicant was declined by the learned Additional Sessions Judge-II, Khairpur, vide order dated 11.01.2025 in Criminal Bail Application No. 3144 of 2024.

3. The details and particulars of the FIR are already available in the bail application and FIR, same could be gathered from the copy of FIR attached with such application, hence, needs not to reproduce the same hereunder.

4. Learned counsel for the applicant contends that the applicant/accused has been falsely implicated in this case by the complainant with mala fide intentions and ulterior motives, as the applicant neither issued any cheque to the complainant nor was involved in any sale or purchase of cattle/buffaloes. It is asserted that the applicant had given a cheque as security to his friend Ghulam Murtaza for the purchase of agricultural land from one Jamaluddin Shar, the brother of the complainant. However, as the said transaction did not materialise, the applicant demanded the return of his cheque and requested the cancellation of the agreement. This allegedly caused annoyance to Jamaluddin, who misused the cheque by stopping its payment. Learned counsel further submits that there is an unexplained delay of approximately five months in the registration of the FIR, for which the complainant has furnished no plausible justification. It is also contended that the alleged offence does not fall within the prohibitory clause of section 497, Cr.P.C. Moreover, as the challan has been submitted, the applicant/accused is no longer required for further investigation. Additionally, after being granted interim pre-arrest bail, the applicant/accused has duly joined the investigation and has not misused the concession of bail. In light of these submissions, learned counsel prays for the confirmation of interim pre-arrest bail. In support of his contention, he relies upon the cases of *Abdul Rasheed vs. The State and another (2023 SCMR 1948), Mian Allah Ditta v. The State and another (2013 SCMR 51), and Muhammad Anwar v. The State and another (2024 SCMR 1567).*

5. On the other hand, the learned Deputy Prosecutor General for the State, assisted by the learned counsel for the complainant, submitted that the applicant/accused is nominated in the FIR with a specific role, alleging that he issued the cheque with mala fide intention, which was subsequently

dishonoured upon presentation. It is further contended that the issuance of the cheque has not been denied by the applicant and that no civil dispute exists between the parties. Therefore, they oppose the confirmation of pre-arrest bail. The learned counsel further argued that all ingredients required for constituting an offence punishable under section 489-F, PPC are fully met in the present case. He maintained that, in view of the material available on record, the trial court had rightly declined bail to the applicant. Consequently, he prayed for the dismissal of the applicant's bail application on the same analogy. In support of his contention, the learned counsel for the complainant relied upon the cases of *Syed Husnain Hyder vs. The State and another (2021 SCMR 1466) and (2019 SCMR 1129).*

6. I have heard the learned counsel for the applicant/accused, the learned APG for the State, as well as the learned counsel for the complainant, and have carefully examined the material available on record.

7. Admittedly, there is an unexplained delay of five months in the lodging of the First Information Report (FIR), which the complainant has failed to justify with any plausible reason. It is a well-settled principle of law that unexplained delay in setting the criminal law into motion creates doubt regarding the veracity of the prosecution's case and suggests the possibility of afterthought, embellishment, or mala fides. Delay of such magnitude, without a reasonable explanation, materially affects the evidentiary value of the prosecution's allegations and entitles the accused to the benefit of doubt at the bail stage. Furthermore, the offence with which the applicant/accused has been charged carries a maximum punishment of up to three years. As such, it does not fall within the prohibitory clause of Section 497 of the Code of Criminal Procedure, 1898. The established judicial principle governing

cases falling outside the prohibitory clause is that *grant of bail is a rule, and refusal is an exception*, unless extraordinary circumstances exist that justify the denial of bail. The Honourable Supreme Court of Pakistan has consistently reaffirmed this principle in a catena of judgments, including *Tarique Bashir v. The State* (PLD 1995 SC 34), *Zafar Iqbal v. Muhammad Anwar and others* (2009 SCMR 1488), *Muhammad Tanveer v. The State* (PLD 2017 SC 733), and *Shaikh Abdul Rehman v. The State, etc.* (2021 SCMR 822).

8. Furthermore, the Honourable Supreme Court of Pakistan, in the case of *Muhammad Imran v. The State and others*(PLD 2021 SC 903), has meticulously formulated the exceptions wherein the grant of bail may be denied. These exceptions include:

> (a) The likelihood of the petitioner's abscondence to evade trial;
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> (b) The risk of tampering with prosecution evidence or influencing prosecution witnesses, thereby obstructing the course of justice; or
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> (c) The probability of the accused repeating the offence, particularly in view of his prior criminal record or the desperate manner in which he has, *prima facie*, acted in the commission of the alleged offence.

The Honourable Supreme Court, in the aforementioned judgment, has unequivocally held that it is incumbent upon the prosecution to establish, through material available on record, that the case of the accused falls within any of these exceptions, thereby justifying the denial of bail. Mere allegations, unsubstantiated by cogent evidence, cannot suffice to deprive an accused of his liberty at the pre-trial stage. In the present case, the prosecution has manifestly failed to establish the existence of any of the aforementioned grounds that would warrant the rejection of the applicant's bail. The record does not indicate any likelihood of abscondence, interference

with the investigation, or a history of repeated criminal conduct. The settled principle of law dictates that a deeper appreciation of evidence is impermissible at the bail stage, and the determination of a bail application is to be made tentatively, based solely on the material available on record, without delving into the merits of the case. From a perusal of the record, it is evident that the cheque in question was issued by the applicant as security in favour of the complainant's brother, namely Jamaluddin. Subsequently, the applicant demanded the return of the cheque upon the cancellation of the underlying agreement. However, the same was not returned to him, which appears to have been done with mala fide intent. Such circumstances further cast doubt upon the bona fides of the prosecution's case and reinforce the applicant's entitlement to bail in accordance with settled judicial principles.

9. The arguments advanced by the learned counsel for the complainant cannot be appreciated at the bail stage for the reason that the Honourable Supreme Court, in its recent judgment, has categorically held that where an offence does not fall within the ambit of the prohibitory clause, bail cannot be refused merely on the ground that the applicant is allegedly involved in an offence under Section 489-F PPC. It is a well-established principle of law that the grant of bail is the rule, and its refusal is an exception, particularly in cases that do not fall within the prohibitory clause of Section 497 Cr.P.C. Mere allegations, devoid of substantial aggravating factors, do not constitute a valid ground for denying bail. The principle of ***"consistency in judicial treatment"*** also applies in the present case, as similarly placed accused persons cannot be subjected to disparate treatment without compelling legal justification. *Equality before the law* is a fundamental tenet of criminal jurisprudence, and any deviation from this principle must be supported by cogent reasons. Nonetheless, it remains within the exclusive domain of the

learned trial court to determine, upon recording evidence, whether the ingredients of the offence, as set forth by the prosecution in the FIR and challan, are established against the accused or not. At the bail stage, a deeper appreciation of evidence is impermissible, and the matter must be decided tentatively based on the material available on record. ***"Fiat justitia ruat caelum"—"let justice be done though the heavens fall"***—remains a guiding principle, ensuring that legal proceedings adhere to fairness and due process.

10. In view of the above discussion, the applicant/accused has successfully made out a case for the confirmation of bail in light of 498-A, Cr.P.C. Accordingly, the instant bail application is allowed, and as a result, the interim pre-arrest bail already granted to the applicant/accused is confirmed on the same terms and conditions.

11. Needless to state, the observations made herein are tentative in nature and shall not prejudice or influence the learned trial court in any manner while adjudicating the case of the applicant/accused on its own merits.

J U D G E

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