

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.244/2025.

Applicant : Asif Ahmed Khan son of Iqbal Ahmed,  
through Mr. Shahnawaz Teevno, Advocate

Respondent : The State  
through Ms. Seema Zaidi, Addl. P.G Sindh  
Duly assisted by Mr. Abdul Hafeez Sindhu,  
advocate for the complainant.

Date of hearing : 14.04.2025

Date of order : 24.04.2025

### ORDER

**KHALID HUSSAIN SHAHANI, J.** –Applicant Asif Ahmed Khan, seeks pre-arrest bail in case Crime bearing No.293/2023, offence u/s 489-F PPC of Police Station Nazimabad Central Karachi. The bail of applicant was declined on 31-08-2023, by the learned Additional Sessions Judge-V Central Karachi.

2. Briefly stated, the facts giving rise to the registration of the present FIR are that the complainant, Murad Ali, a cloth merchant by profession, alleged that he had longstanding business dealings with the accused, Asif Ali Khan. In furtherance of their business arrangement, the complainant supplied raw materials worth Rs. 3,986,000/- to the accused. In lieu thereof, the accused issued 21 post-dated cheques drawn on Faysal Bank, which the complainant duly presented for encashment. However, all the said cheques were dishonoured upon presentation due to insufficient funds. Upon being approached by the complainant, the accused allegedly extended false assurances and repeatedly avoided settling the outstanding dues. Subsequently, the accused issued eight more cheques, totaling Rs. 1,005,000/- (Rupees One Million and Five Thousand only), which too were dishonoured when presented. Aggrieved by this conduct, the complainant lodged the instant FIR.

3. Learned counsel for the applicant/accused contended that the accused has been making bona fide efforts to fulfill his commitments and that a significant portion of the outstanding amount, namely Rs. 1,420,000/- (Rupees Fourteen Lac and Twenty Thousand), has already been paid to the complainant. It was further submitted that the claim presently under

dispute, arising out of the dishonoured cheques, amounts to Rs. 1,005,000/-, which is lesser than the sum already repaid. The learned counsel highlighted that the accused has no prior criminal record, enjoys a respectable standing in society, and is known for his upright moral conduct. Apprehending unjustified arrest and humiliation at the hands of the police, it was prayed that the interim pre-arrest bail granted earlier be confirmed, especially as the accused is willing to face trial and resolve the matter in accordance with law.

4. Conversely, the learned Assistant Prosecutor General, ably assisted by the learned counsel for the complainant, opposed the bail application with considerable vehemence. It was argued that the accused had already availed the concession of pre-arrest bail on a previous occasion by entering into a compromise agreement with the complainant, wherein he undertook to repay the outstanding amount. In that context, he issued 24 cheques amounting to Rs. 3,620,000/-, on the strength of which two bail applications were confirmed by a common order. Subsequently, upon dishonour of the said cheques, the complainant moved an application under Section 497(5) Cr.P.C., seeking recall of bail. The accused once again undertook before the court that the cheques specified in the agreement, particularly those at Serial Nos. 11 and 12, would be honored before 01-12-2024, and he would adhere to the agreed payment schedule. However, despite such assurances, the accused again defaulted, and further cheques were dishonoured. In light of this willful non-compliance, the learned trial court rightly exercised its discretion by recalling the bail and remanding the accused to custody. The learned counsel for the complainant further submitted that the accused has consistently employed dilatory tactics to evade his financial obligations and to misuse the protective shield of bail, thereby undermining the judicial process. It was emphasized that one who seeks equity must come with clean hands, and the accused's repeated failures to honor his commitments reveal mala fide intent. Hence, it was urged that the prayer for confirmation of bail be declined in the interest of justice.

5. Before discussing the merits of the instant bail application, I would like to emphasize upon the landmark judgment of the Honorable Supreme Court of Pakistan in case of Rana Muhammad Arshad Vs. The State (PLD

2009 Supreme Court 427) wherein the HONorable Supreme Court of Pakistan was pleased to held that:

*“(a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;*

*(b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;*

*(c) bail before arrest can not be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and That there were, in fact, sufficient grounds warranting further inquiry into his guilt;*

*(d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to B disagree and dishonour him;*

*(e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;*

*(f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first instant i.e. the Court of Session, before petitioning the High Court for the purpose.”*

6. Upon a tentative assessment of the material available on record, it appears that the accused had earlier been granted the concession of bail on the basis of a purported compromise and undertakings made before the court. However, his subsequent conduct in dishonouring the cheques despite clear commitments reflects a pattern of avoidance and misuse of judicial indulgence. The principle that bail once granted may be recalled if the accused fails to comply with the conditions laid down is firmly entrenched in our jurisprudence. The accused has not only failed to honor the repayment schedule but has also breached the solemn undertakings given before the court, thereby disentitling himself from any discretionary relief.

7. Be that as it may, the Hon’ble Supreme Court in a case reported as *Shahzada Qaiser Arfat alias Qaiser v. The State and another* (PLD 2021 SC 708) on the subject of bail before arrest provides an interesting and beneficial view through an approach reminiscent of the one pursued by a

Full Bench of the Lahore High Court in, PLD 1949 Lahore 21 Hidayatullah's case. What could be read between the lines in the learned Full Bench's judgment has been eloquently documented and made conspicuous by the Hon'ble Apex Court. The honorable Apex Court has held that the reluctance of the courts in admitting accused persons to pre-arrest bail by treating such a relief as an extraordinary one without examining whether there was sufficient incriminating material available on record to connect the accused with the commission of the alleged offence, and his insistence only on showing mala fide on part of the complainant or the police for granting pre-arrest bail did not appear to be correct being in conflict with the right to liberty and fair trial.

8. In *Kamran Attaullah and another v. The State* (2021 SCMR 449), the Honorable Supreme Court observed,

*“that the accused in a criminal case could not be granted bail before arrest to subvert or undermine investigative procedures and that malafide, manifestly intriguing upon the intended arrest was the only justification to suspend or divert the usual course of law, a step which was most extraordinary by all means.”*

9. Thus the above situations manifests that the conduct of the accused and the surrounding circumstances are highly relevant in determining whether the concession of bail should be extended. In the instant case, the repeated dishonouring of cheques, despite assurances, and the non-compliance with earlier undertakings furnish sufficient grounds to believe that the accused is not acting in good faith.

10. Thus, in view of the above, and to prevent further abuse of the process of law, prima facie applicant has failed to make out case for bail. Accordingly, bail application stands dismissed and interim order dated: 28.01.2025 is hereby recalled.

**J U D G E**