

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Bail Application No.S-205 of 2025

Applicant : Farhan Ali son of Muhammad Yousuf, through M/s. Ahmed Hussain and Rukhsana Memon, Advocates.

Complainant: Present in person.

Respondent : The State
Through Ms. Safa Hisbani, A.P.G.

Date of hearing : **11.04.2025**

Date of Order : **11.04.2025**

O R D E R

Syed Fiaz ul Hassan Shah, J: Through the instant bail application, the applicant/accused above named seeks his pre-arrest bail in Crime No.113 of 2024, under sections 489-F, P.P.C, registered at P.S Makki Shah Hyderabad, after his bail plea was declined by the learned 7th Additional Sessions Judge, Hyderabad , vide order dated 08.01.2025.

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

3. Learned counsel for the applicant/accused submits that the applicant/accused is innocent and has falsely been implicated in this case by the complainant; that not a single / independent witness is available with complainant and neither produced any documentary and evidentiary proof and also not produce any receipt but the complainant dramatically managed the instant FIR; that the cheque was not issued by the applicant / accused to the complainant as there is no liability on the applicant / accused but complainant cooked false story as one cheque was missed about one year ago from applicant / accused and such NC was lodged by applicant / accused and complainant misused the cheque of applicant/accused that FIR is lodged with inordinate delay of 40 days without any explanation and section 489-F PPC

does not fall within the prohibitory clause of section 497 Cr.P.C. He lastly prayed for confirmation of interim pre-arrest bail.

4. On the other hand, learned A.P.G for the State vehemently opposed for grant of interim pre-arrest bail in favour of applicant/accused. While, complainant present before me stated that applicant/accused on the pretext of subject bogus cheque has received a huge amount of Rs.300,000/-from him, therefore, he is not entitled for concession of bail .

5. Heard arguments and perused the record.

6. It is matter of record that challan has been submitted before the trial Court and the liability with regard to the ingredients of section 489-F PPC will be determined by the trial Court after adducing prosecution evidence and scanning the material on record. Admittedly, the offence does not fall within the ambit of prohibitory clause of section 497 Cr.P.C and in such like cases the grant of bail is a rule and refusal is an exception. Even if, it is presumed that liability standing against the applicant/accused for the cheque to repay the amount, that would be required full-fledged trial and in the meanwhile the applicant has expressed serious apprehension of maltreatment at the hands of police. Furthermore, the FIR is lodged after delay of about [40] days, to which no satisfactory explanation has been furnished. Moreover, the case of the prosecution rests upon the alleged bounced cheque, hence all the documentary evidence is available with the prosecution, therefore, no question arise for tempering with the evidence at the hands of applicant. The investigation has been completed and challan against applicant/accused has already been submitted, hence, the applicant/accused is no more required for further investigation. The principles of doctrine of rule of consistency or equal treatment can apply by courts in criminal case of post-arrest bail are now attracted in pre-arrest bails. The concept and principles are now ruled and laid down by the Hon'ble Supreme Court of Pakistan" **Jamaluddin Rabail v. The State" (Criminal Petitions No.41-K & 42-K of 2023)** in this

authoritative judgment and it has been held and elaborated the extensive application of doctrine of rule of consistency is also applicable in the case of pre-arrest bails. The conducive portion delineated hereunder:

“As far as the principle enunciated by this Court regarding the consideration for grant of pre-arrest bail and post-arrest bail are entirely on different footings is concerned, we have noticed that in this case both the petitioners are ascribed the same role. For the sake of arguments if it is assumed that the petitioner enjoying ad interim pre-arrest bail is declined the relief on the ground that the considerations for pre-arrest bail are different and the other is granted post-arrest bail on merits, then the same would be only limited upto the arrest of the petitioner Jamaluddin because of the reason that soon after his arrest he would be entitled for the concession of post-arrest bail on the plea of consistency. Reliance is placed on the cases reported as Muhammad Ramzan Vs. Zafarullah (1986 SCMR 1380), Kazim Ali and others Vs. The State and others (2021 SCMR 2086), Muhammad Kashif Iqbal Vs. The State and another (2022 SCMR 821) and Javed Iqbal Vs. The State through Prosecutor General of Punjab and another (2022 SCMR 1424).”

7. The principles of grant of concession of pre-arrest bail has been elaborated by the Supreme Court of Pakistan in case of ***Rana Muhammad Arshad Vs Muhammad Rafique and another (PLD 2009 SC 427)*** that the exercise of this power should be confined to cases in which not only a good prima facie ground is made out for the grant of bail in respect of the offence alleged, but also it should be shown that if the Applicant were refused bail, such an order would from some ulterior motive with the object of injuring the Applicants, or that the Applicant would in such an eventuality suffer irreparable harm. Therefore, the present case squarely falls within parameters of above principles laid down by the august court. No exceptional circumstance has been pointed out by learned A.P.G in this case to withhold bail to applicant. I, therefore, in view of the above allow this bail application and confirmed the interim pre-arrest bail in favour of applicant on same terms and conditions and surety amount as recorded in order dated 5.3.2025 with directions to the applicant/accused to appear before the trial court to face trial.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned Trial Court while deciding the case of the applicants on merits.

JUDGE

Ahmed/Pa,