

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.267 of 2025

Applicants : Zafarullah, through Peer Asadullah Shah, Advocate.
Complainant : Muhammad Ali Shah, through Mr. Mian Haad A.M. Paggawala, Advocate.
Respondent : The State, through Mr. Muhammad Noonari, D.P.G.
Date of Hearing : 20.11.2025
Date of Order : 20.11.2025

ORDER

TASNEEM SULTANA, J: Through this Criminal Bail Application, the applicant Zafarullah seeks pre-arrest bail in crime No.701/2024 registered at Police Station Darakhshan, Karachi under Section 489-F PPC. Earlier, the applicant's plea for pre-arrest bail was allowed, but same was recalled by the learned VIth Additional Sessions Judge, Karachi South vide order dated 27.01.2025, hence the present application.

2. The brief facts of the prosecution case are that on 31-10-2024 the applicant, during a settlement meeting, allegedly issued two cheques, one for Rs.3,000,000/- bearing No.0037664 and the other for Rs.3,500,000/- bearing No.0037665, towards payment of Rs.6,500,000/-. Both cheques were presented by the complainant but were dishonoured due to insufficient funds. It is further alleged that the applicant had also handed over an Alto car, Registration No.BWP-952, towards partial adjustment. The present FIR was lodged after grant of petition under section 22 A Cr.P.C.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated with mala fide intent; that the cheques referred to the FIR were not issued by the applicant towards any liability but had been lost from his vehicle on 01.11.2024, which loss was immediately reported through a written application at P.S Gulistan-e-Johar; that on 05.11.2024 he again approached SHO Darakhshan when the complainant allegedly contacted him regarding those cheques, thereby apprehending that the complainant will misuse them; that the plea of lost cheques is fortified by the Bank Islami stop-payment confirmation

dated 05.11.2024; that the applicant has no subsisting business liability towards the complainant; that the matter does not fall within the prohibitory clause of Section 497 Cr.P.C; and that no dishonest intention can be gathered from the material on record, thus the matter requires further inquiry.

4. Conversely, learned DPG assisted by learned counsel for the complainant opposed the confirmation of pre-arrest bail and submitted that the cheques in question were consciously issued by the applicant himself towards a subsisting liability; that both cheques were deposited in the ordinary course of dealings and were dishonoured due to insufficient funds; that the plea of lost cheques is an afterthought introduced only after dishonour; that the complainant has placed on record copies of the cheques, bank return memos, legal notice and bank verification; and that no mala fide or ulterior motive has been demonstrated for purposes of pre-arrest bail.

5. Heard. Record perused.

6. It reflects from the material placed on record that the allegation against the applicant is issuance of two cheques which, upon presentation by the complainant, were dishonoured due to insufficient funds. The applicant, however, has taken the stance that both cheques had been lost from his car on 01.11.2024, which loss was immediately reported through a written application, coupled with a request for legal action in case of misuse. The applicant also claims to have approached the SHO Darakhshan on 05.11.2024 informing him that the complainant had contacted him regarding the said cheques, thus asserting misuse rather than voluntary issuance. Conversely, the complainant asserts that the cheques were consciously issued by the applicant himself towards a subsisting liability and were deposited in the ordinary course of dealings, and that the plea of lost cheques is an afterthought raised only after dishonour.

7. From the documents produced by the applicant, including the Bank Islami stop-payment confirmation dated 05.11.2024 showing stop-payment instructions in respect of the same cheques, it appears that the plea of lost cheques is not a bald assertion but is supported by contemporaneous applications. Whether the cheques were actually lost and subsequently misused, or were intentionally issued towards a liability as alleged by the complainant, is a disputed

factual aspect which cannot be conclusively assessed at this stage and requires determination through evidence at trial.

8. The offence complained of does not fall within the prohibitory clause of Section 497 Cr.P.C. Once the case falls outside of prohibitory clause, the principle laid down by the Hon'ble Supreme Court of Pakistan regarding grant of bail as a rule and refusal an exception. Reliance is placed on Shehzad v. The State (2023 SCMR 679) and Tariq Bashir and others v. The State (PLD 1995 SC 34). The Hon'ble Supreme Court has repeatedly held that bail is neither punitive nor preventive, as punishment begins only after conviction. If a person is mistakenly granted bail, such error can be corrected upon conviction, whereas wrongful pre-trial detention, if ultimately found unjustified, causes irreparable harm to liberty. Reliance is also placed upon the judgment in Nazir Ahmed alias Bharat v. The State and others (2022 SCMR 1467), wherein it was observed as under:

“Section 489-F of P.P.C. is not a provision which is intended by the legislature to be used for recovery of an alleged amount, rather for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of C.P.C.”

9. In these circumstances, and considering that the competing versions regarding issuance or misuse of the cheques are purely factual and can only be resolved after recording of evidence by the trial Court, the applicant has made out a case for confirmation of the interim pre-arrest bail already granted to him.

10. Accordingly, the interim pre-arrest bail granted to the applicant vide order dated 29.01.2025 stands confirmed on the same terms and conditions.

11. The above observations are tentative in nature and shall not prejudice the case of either party at trial.

JUDGE

Ayaz Gul