IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2388 of 2025

Shahzaib son of Muhammad Shoaib.....Applicant/Accused

Versus

The State.....Respondent

Date of Hearing : *05.11.2025*

For the Applicant : Mr. Ilyas Ahmed Awan, Advocate.
For the complainant : Mr. Azam Khan Awan, Advocate.
For the State : Mr. Muhammad Noonari, D.P.G.

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ORDER

TASNEEM SULTANA, J: Through this criminal bail before arrest application, the applicant Shahzaib son of Muhammad Shoaib seeks pre-arrest bail in Crime No.529 of 2025 registered at Police Station Preedy, under Sections 489-F, PPC. Earlier same relief was granted but was recalled by the learned IIIrd Additional Sessions Judge, Karachi South vide order dated 12.09.2025.

2. Brief facts of the prosecution case are that the complainant Muhammad Aslam S/O Qasim, proprietor of *Faisal Garments* at Karim Centre, Saddar, Karachi, stated that about two years ago, he entered into a business arrangement with his acquaintance Shahzeb S/O Shoaib (present applicant), who deals in readymade garments at the International Market. The complainant supplied garments worth Rs.25 lacs on a profit-sharing basis of 50% each. After three months, Shahzeb paid Rs.2,50,000/- as profit while the invested amount remained intact. Subsequently, Shahzeb informed the complainant that he had started a computer and accessories business and invited him to invest Rs.32 lacs, promising a profit of Rs.7/8 lacs within 3/4 months. Trusting him due to prior dealings, the complainant invested the said amount. Earlier, he had also invested Rs.25 lacs with Shahzeb in a ration business and received Rs.10 lacs profit. Thus, in total, the complainant invested Rs.82 lacs with Shahzeb. When Shahzeb stopped paying profit and the complainant demanded his principal amount, Shahzeb issued four cheques each for Rs.15 lacs (Cheque Nos. 10056722, 10056723, 10056724, and 10056725, all

dated 20.04.2025) drawn on Bank Al Habib, Regal Chowk Branch, Karachi. However, upon presentation through Meezan Bank, Abdullah Haroon Road Branch, Karachi, the cheques were dishonoured on 29.04.2025, 18.07.2025, and 21.07.2025. On being approached, Shahzeb failed to return the money and made false excuses, leading the complainant to lodge the present FIR.

3. Learned counsel for the applicant contended that the present case has been falsely implicated with malafide intention; that there is a delay of more than four months in lodging of FIR; that the applicant/accused was running business and complainant given Rs.25,00,000/- for investment in business; that applicant/accused at the start of business given four surety cheques and returned all the payment with profit to the complainant and demanded his four cheques but the complainant made lame excuses and not returned the cheques; that the essential ingredient of dishonest intention at the time of issuance of cheque is lacking; that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C.; and that the applicant is ready to face the trial, therefore, he deserves the concession of bail.

4. Conversely, learned D.P.G. opposed the plea and argued that the applicant issued a substantial cheques which were dishonoured upon presentation, thereby defrauding the complainant; that the dishonoured cheques was issued not as a security but towards discharge of a legally enforceable liability; and that such conduct prima facie attracts the mischief of Section 489-F, PPC. She contended that the offence undermines public confidence in financial transactions and does not warrant leniency at the bail stage.

5. Heard. Record perused.

6. A tentative assessment of the material available on record reveals that the gravamen of the allegation against the applicant is the issuance of cheques which were dishonoured upon presentation. The dispute, however, emanates from a business transaction, and the applicant’s stance is that the cheques were issued merely as security and not for encashment.

7. Prima facie, the mere issuance of a cheque(s) and its being dishonored by itself is not an offense, unless and until dishonesty on the part of a payer is proved.

8. Provisions of Section 489-F,P.P.C.,will only be attracted if the following essentials ingredients are fulfilled and proved by the prosecution :-

(i) *issuance of the cheque,*

(ii) *such issuance was with dishonest intention;*

(iii) *the purpose of issuance of cheque should be :-*

(a) *to repay a loan; or*

(b) *to fulfill an obligation (which in wide term inter-alia applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds a person to some performance).*

(iv) *on presentation, the cheques are dishonored. However, a valid defense can be taken by the accused, if he proves that;-*

(i) *he had made arrangements with his bank to ensure that the cheques would be honored; and*

(ii) *that the bank was at fault in dishonoring the cheque.*

9. At this stage, the element of dishonest intention appears a matter to be determined by the trial Court after recording of evidence. The dispute, on the face of record, arises from a contractual or civil transaction, and the penal provisions of Section 489-F, PPC, may not be attracted in the absence of such intent. The offence alleged does not fall within the prohibitory clause of Section 497 Cr.P.C., and the case calls for further inquiry.

10. When on 25.10.2002, Section 489-F, P.P.C. was inserted in P.P.C., Order XXXVII, C.P.C. was already a part of the statute book providing the mode of recovery of the amounts on the subject matter of negotiable instruments, and a complete trial is available for the person interested in the recovery of the amounts of a dishonored cheque, therefore, not only that the complainant in a criminal case under Section 489- F, P.P.C. cannot ask a Criminal Court to effect any recovery of the amount involved in the cheque, but also the amount whatsoever high it is, would not increase the volume and gravity of the offense.

11. The offence alleged under Section 489-F, PPC carries a maximum punishment of three years and, therefore, does not fall

within the prohibitory clause of Section 497, Cr.P.C. The settled principle is that in such cases, grant of bail is 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."*

12. The FIR was lodged more than four months after the cheque was dishonoured, with no plausible explanation of such delay; such inaction, prima facie, raises doubt regarding the bona fides of the complainant. Investigation has been completed, challan has been submitted. The applicant has joined the investigation.

13. In view of the above facts and circumstances, interim pre-arrest bail already granted to the applicant/ accused vide order dated 16.09.2025 was confirmed on same terms and conditions, by a short order dated 05.11.2025 and these are the reasons for the same.

14. The applicant shall attend the trial regularly and shall not misuse the concession of bail; any violation shall entail cancellation of bail according to law. The observations made herein are tentative in nature and shall not prejudice either party at trial.

JUDGE

Ayaz Gul