IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No240 of 2025

For the Applicant	:	Shaikh Abdul Saleem son of Abdul Raheem Through Mr. Zahid Hussain Baladi, Advocate
For the Respondent-2	:	Abdul Wasi son of Abdul Raheem Through Mr. M. Saeed Shehzad, Advocate.
The State	:	Mr. Zahoor Shah, A.P.G.
Date of hearing	:	03.11.2025
Date of Order	:	17.11.2025

O R D E R

Jan Ali Junejo, J:-- Through this Criminal Revision Application under Sections 435, 439-A Cr.P.C., the applicant/accused Shaikh Abdul Saleem seeks setting aside of the order dated 13.10.2025 (hereinafter referred to as the *"Impugned Order"*) passed by the learned District & Sessions Judge, Karachi (Malir), in Criminal Miscellaneous Application No.37 of 2025, whereby the learned District & Sessions Judge was pleased to cancel the bail earlier granted to the applicant by the learned VIth Judicial Magistrate, Karachi (Malir), in Criminal Bail Application No.96 of 2025 vide order dated 25.07.2025 in case FIR No.515/2025, under Section 489-F, PPC, registered at Police Station Malir City, Karachi.

2. The prosecution case, briefly stated, is that the complainant Abdul Wasi alleged that he entrusted to his brother, the present applicant, cash amounting to Rs.17,00,000/- and 734.92 grams of gold ornaments for the purpose of construction of his house, and in

return, the applicant allegedly issued cheque No. HMS-14835104 drawn on Habib Metropolitan Bank, Karachi, amounting to Rs.20,000,000/- (Rupees Twenty Million), which upon presentation was dishonoured due to insufficient funds. Consequently, the above-mentioned FIR was registered against the applicant under Section 489-F, PPC.

3. The learned Judicial Magistrate, after examining the material available on record and hearing both sides, was pleased to grant post-arrest bail to the applicant through order dated 25.07.2025, observing inter alia that: (i) no substantiated documentary evidence of entrustment or liability had been produced; (ii) the dispute appeared to be of a civil and familial nature between two brothers; (iii) the offence does not fall within the prohibitory clause of Section 497, Cr.P.C.; and (iv) the matter required further inquiry within the meaning of Section 497(2), Cr.P.C.

4. Subsequently, respondent No.2/complainant moved an application under Section 497(5), Cr.P.C. before the learned District & Sessions Judge, Karachi (Malir), seeking cancellation of bail. The learned District & Sessions Judge, vide order dated 13.10.2025, set aside the order of the learned Magistrate and cancelled the applicant's bail, holding that the bail order was patently illegal and that the applicant had misused the concession of bail.

5. Learned counsel for the applicant vehemently contended that the impugned order suffers from serious legal and factual infirmities, rendering it arbitrary, perverse, and in direct conflict

with the settled parameters governing cancellation of bail. He argued that the learned Judicial Magistrate had granted bail through a well-reasoned and speaking order after proper application of judicial mind to the material on record. It was submitted that the applicant has remained fully compliant with all conditions of bail, has neither misused the concession nor attempted to influence the investigation, and has always appeared before the Court, thereby demonstrating bona fides. He further contended that the dispute between the parties, who are real brothers, is deeply rooted in a long-standing civil and familial conflict, and the FIR is merely an extension of such mala fide and personal vendetta. Learned counsel asserted that no admissible or substantive documentary evidence of entrustment, liability, or lawful consideration has been produced by the complainant, which is a mandatory precondition for attracting Section 489-F, P.P.C. He argued that a dishonoured cheque, without proof of underlying legally enforceable debt, does not constitute an offence. It was further argued that the essential ingredients of Section 489-F, P.P.C. — including issuance of the cheque with dishonest intent — were completely missing, rendering the matter one of civil liability rather than criminal culpability. On these grounds, he prayed for setting aside the impugned order and restoration of the bail earlier granted.

6. Conversely, learned counsel for respondent No.2 supported the impugned order and submitted that the learned District & Sessions Judge had rightly exercised revisional jurisdiction in cancelling the bail. He argued that sufficient prima facie material

exists showing that the accused issued the dishonoured cheque in discharge of a subsisting liability, thereby fulfilling the statutory ingredients of Section 489-F, P.P.C. He contended that the applicant's conduct after issuance of the cheque reflected mala fide intent to defraud, and the complainant had suffered financial loss due to the applicant's deliberate act. Learned counsel maintained that the plea of "civil dispute" was a mere afterthought and did not absolve the accused from criminal liability, as the act of issuing a dishonoured cheque squarely attracts penal consequences. He further asserted that the order passed by the Magistrate was not only superficial but also legally flawed, and therefore the revisional court had rightly set it aside. Lastly, he prayed for dismissal of the present bail/criminal revision application.

7. Learned Additional Prosecutor General fully adopted the submissions advanced by learned counsel for respondent No.2 and added that sufficient material exists on record to connect the applicant with the commission of the alleged offence. He argued that the dishonoured cheque, coupled with the surrounding circumstances, constitutes strong incriminating evidence, justifying cancellation of bail. The learned A.P.G. further submitted that the applicant failed to demonstrate any exceptional hardship, mala fide, or arbitrariness in the impugned order warranting interference by this Court. He maintained that the order of the learned District & Sessions Judge is well-reasoned, legally correct, and fully aligned with the principles governing cancellation of bail. Accordingly, he prayed for dismissal of the present revision/bail application.

8. I have considered the arguments advanced by the learned counsel for the parties and have undertaken a tentative assessment of the record. The core issue before this Court is the legality and propriety of the Impugned Order passed by the learned Sessions Judge in the exercise of his jurisdiction under Section 497(5) Cr.P.C. The revisional jurisdiction of the High Court under Section 439, Cr.P.C. extends to examining the correctness, legality, or propriety of any order passed by an inferior Criminal Court. Interference is warranted where the inferior court has acted arbitrarily, illegally, or with material irregularity, resulting in a miscarriage of justice. The Impugned Order, being a cancellation of bail, directly affects the liberty of the subject and must therefore be scrutinized with due care. It is a settled principle of law, as consistently enunciated by the Honourable Supreme Court of Pakistan, that cancellation of bail stands on a distinct footing from the grant of bail. Once bail has been granted by a competent court, it cannot be cancelled except on strong and exceptional grounds, such as:

1. Misuse of the concession of bail;
2. Interference with the investigation or intimidation of witnesses;
3. Likelihood of absconding; or
4. The bail order being patently illegal or perverse, resulting in miscarriage of justice.

It is equally well-settled that mere disagreement with the view taken by the trial court or the possibility of an alternate interpretation of the material on record does not warrant interference with a discretionary order granting bail. In similar circumstances, in the case of ***Abdul Majid Afridi v. The State and***

another (2022 SCMR 676), the Honourable Supreme Court of Pakistan held that: *"It is now established without any hesitation that considerations for the grant of bail and cancellation whereof are entirely on different footings. Generally speaking, the Courts are reluctant to interfere in the order of grant of bail and even in cases where it is apparently found that the bail granting order is not sustainable in the eyes of law, the Courts restrain to interfere in such matters if it is found that there was nothing to show that the accused has misused the concession of bail"*. In another case, ***Abdul Qudoos v. Hafiz Israr Ahmed and another (2024 SCMR 1705)***, the Honourable Supreme Court of Pakistan held that: *"It further reveals that after tentative assessment of the material available on record, through a well-reasoned and speaking order, the Sessions Judge, Kharan granted pre-arrest bail to the petitioner but same has wrongly been cancelled by Single Bench of the Balochistan High Court vide impugned order without appreciating that no grounds for cancellation of pre-arrest bail of the petitioner were available to the complainant. While cancelling the pre-arrest bail of the petitioner, Single Bench of the Balochistan High Court has also failed to appreciate that there was nothing on record to show that the petitioner ever abused or misused the concession of pre-arrest bail"***.

9. From the record, it is evident that the learned Judicial Magistrate evaluated the available material, considered the relationship between the parties, and rightly treated the matter as one requiring further inquiry; that no allegation or material exists to suggest that the applicant, after grant of bail, misused the concession or attempted to tamper with the prosecution evidence; that the offence under Section 489-F, P.P.C. does not fall within the prohibitory clause of Section 497, Cr.P.C.; and that the order passed

by the learned Magistrate is a reasoned judicial order rendered in due exercise of lawful jurisdiction. Accordingly, the learned Judicial Magistrate, being the competent court of first instance, exercised his discretionary powers judiciously in accordance with the settled principles of criminal jurisprudence. In another case where bail was granted in an offence under Section 489-F, P.P.C. i.e., ***Ali Anwar Paracha v. The State and another (2024 SCMR 1596)***, the Honourable Supreme Court of Pakistan held that: *"In this view of the matter, the question whether the cheque was issued towards fulfilment of an obligation within the meaning of section 489-F, P.P.C. is a question, which would be resolved by the learned Trial Court after recording of evidence. The petitioner is behind the bars since his arrest. The maximum punishment provided under the statute for the offence under section 489- F, P.P.C. is three years and the same does not fall within the prohibitory clause of section 497, Cr.P.C. It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception"*. In another similar offence under Section 489-F, P.P.C., in the case of ***Muhammad Anwar v. The State and another (2024 SCMR 1567)***, the Honourable Supreme Court of Pakistan was pleased to grant bail by observing that: *"In view of the above, the question whether the cheques were issued towards repayment of loan or fulfillment of an obligation within the meaning of Section 489-F, P.P.C. is a question, which would be resolved by the learned Trial Court after recording of evidence. The maximum punishment provided under the statute for the offence under Section 489-F, P.P.C. is three years and the same does not fall within the prohibitory clause of Section 497, Cr.P.C. It is settled law that grant of*

bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception".

10. The law is firmly settled by the Superior Courts of Pakistan that the considerations for cancellation of bail are stricter than those for its grant. Once a competent court grants bail, it creates a vested right in the accused, and that liberty cannot be curtailed unless "strong and exceptional grounds" are established by the prosecution. These grounds are generally confined to:

- The bail order being perverse, illegal, or based on misrepresentation.
- Misuse of the concession of bail (e.g., absconding, tampering with evidence, repeating the offence).
- Fresh facts establishing guilt have come to light.

In the present case, the learned Sessions Judge found the Magistrate's order to be "patently illegal and factually incorrect". However, a mere possibility of an alternate view does not render a bail order perverse or illegal. The Magistrate's finding that the matter required "further inquiry" was based on sound reasoning, considering:

- The huge disparity between the alleged debt (Rs. 1.7 Million + Gold) and the cheque amount (Rs. 20 Million).
- The dishonor reason being a "Dormant Account", which seriously compromises the element of dishonest issuance against a current, lawful obligation, a sine qua non for Section 489-F PPC.
- The disputed nature of the alleged agreement and receipts, which the Magistrate rightly considered as matters requiring evidence at trial.

The Sessions Judge's attempt to substitute his own tentative assessment of the documentary evidence, including a comparison of signatures, amounts to pre-judging the case and is an exercise beyond the scope of a bail cancellation application. The learned Sessions Judge erred significantly in holding that the Applicant's failure to return the money constituted a *"misuse of bail concession"*. The term *"misuse of concession"* in legal parlance refers to the accused's conduct after being released on bail, such as:

- Absconding or failing to appear in Court.
- Threatening or tampering with prosecution witnesses.
- Committing a fresh similar offence.

The failure to satisfy the Complainant's financial claim, which is the very subject matter of the dispute, cannot be termed as a misuse of the liberty granted by the Court. To hold otherwise would be to convert the bail process into a debt recovery mechanism, which is contrary to the spirit of criminal jurisprudence. In similar circumstances, in the case of ***Abdul Rasheed v. The State and another (2023 SCMR 1948)***, the Honourable Supreme Court of Pakistan held that: *"Even otherwise, even if the complainant wants to recover his money, 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"*. The record confirms that the Applicant was regularly attending the trial, thereby not misusing his liberty in the legal sense.

11. In view of the foregoing discussion and the settled principles laid down by the superior courts, this Court is of the considered view that the learned Judicial Magistrate rightly exercised his

judicial discretion in granting bail to the applicant, which could not have been cancelled in the absence of any misuse of concession, supervening circumstances, or exceptional grounds.

12. In light of the foregoing analysis, this Court finds that the Impugned Order dated 13-10-2025 passed by the learned District and Sessions Judge, Karachi Malir, is based on an erroneous appreciation of the law and facts, and is contrary to the well-established principles governing the cancellation of bail. The Complainant failed to establish the requisite *"strong and exceptional grounds"* for the cancellation of bail. Consequently, the Criminal Revision Application is allowed. The Impugned Order dated 13-10-2025 passed by the learned District and Sessions Judge, Karachi Malir, in Criminal Misc. Application No. 37/2025, is hereby set aside and recalled. The Order dated 25-07-2025 passed by the learned Judicial Magistrate, Malir, granting post-arrest bail to the Applicant, is restored. The applicant shall be released forthwith, if not required in any other case, upon furnishing solvent surety in the sum of Rs. 1,000,000/- (Rupees One Million) to the satisfaction of the trial Court. If the surety earlier furnished remains intact, the applicant shall not be required to furnish fresh surety. Needless to mention, the observations recorded herein are tentative in nature, made solely for the purpose of deciding the present matter, and shall not, in any manner, prejudice or influence the learned trial Court at the stage of final adjudication.

JUDGE