

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 2097 of 2025

Applicant : Syed Muhammad Ayaz Haider
through Mr. Shah Jahan Hanif, Advocate

Complainant : Faheem Aslam
through Mr. Liaquat Ali Khan, Advocate

Respondent : The State
through Mr. Mohammad Noonari, Advocate

Date of hearing : 20.11.2025

Date of order : 20.11.2025

ORDER

TASNEEM SULTANA, J.—Through this Criminal Bail Application, the applicant, Syed Muhammad Ayaz Haider, seeks pre-arrest bail in Crime No.211 of 2024, registered at Police Station Kharadar under section 489-F, P.P.C., which was earlier declined by the learned Additional Sessions Judge-II, Karachi South, vide order dated 22.07.2025.

2. Brief facts of the prosecution case are that the complainant earns his livelihood through private service. It is alleged that one Farhan Ali, stated to be a long-standing acquaintance of the complainant, contacted him from Malaysia and conveyed that his friend, the present applicant, was in urgent need of a sum of Rs.20,00,000/- for a short period of twenty days. Upon such request and assurance, the complainant allegedly paid the said amount in cash to the applicant. It is further alleged that in lieu thereof, the applicant issued two cheques drawn on United Bank Limited, Model Colony Branch, Karachi, bearing Cheque No.50881768 dated 20-12-2023 for Rs.15,00,000/- and Cheque No.50881769 dated 20-12-2023 for Rs.5,00,000/-. The complainant claims that upon presentation of the said cheques through Meezan Bank, Machi Miani Branch, Kharadar, Karachi, both were dishonoured on 03-01-2024 with the remarks “insufficient funds.” It is alleged that despite repeated demands, the applicant failed to repay the amount, whereafter, after filing application under Section 22A & B Cr.P.C. the present FIR was registered.

3. Learned counsel for the applicant contended that the applicant has been falsely implicated with mala fide intention; that the alleged transaction, even if taken at its face value, discloses a dispute of purely civil nature which has been given a criminal colour to exert pressure upon the applicant; that there is an unexplained and inordinate delay in lodging the FIR which

seriously dents the credibility of the prosecution version; that no legally enforceable liability has been established against the applicant; that there is no independent or documentary proof regarding payment of the alleged amount; that the cheques in question were not voluntarily issued and were allegedly obtained under coercion and force; that the question of liability and the circumstances under which the cheques were obtained require deeper probe and further inquiry; therefore, interim pre-arrest bail granted earlier may be confirmed.

4. Conversely, learned Deputy Prosecutor General, assisted by learned counsel for the complainant, while opposing the application, submitted that the applicant issued the cheques which were dishonoured on account of insufficiency of funds; that such conduction prima facie attracts the mischief of Section 489-F PPC; that plea regarding absence of legally enforceable liability is misconceived and cannot be examined at this stage, and that applicant is not entitled to the extra ordinary relief of pre-arrest bail.

5. Heard. Record perused.

6. The allegation against the applicant is that he received an amount of Rs.20,00,000/- from the complainant and, in discharge thereof, issued two cheques which were subsequently dishonoured on account of insufficiency of funds. The defence taken by the applicant is that the cheques in question were not voluntarily issued but were allegedly obtained under coercion and force. A perusal of the record further reveals that there is considerable delay in lodging the FIR, for which no plausible explanation has been offered. The alleged transaction is not supported by any independent documentary material reflecting actual payment of the amount to the applicant. Mere issuance of a cheque followed by its dishonour does not, by itself, constitute an offence under section 489-F, P.P.C. The prosecution is required to establish the existence of a legally enforceable liability and dishonest intention at the time of issuance of the cheque. Whether the cheques were voluntarily issued or were obtained under coercion, and whether they were issued towards a legally enforceable liability, are matters which require deeper appreciation of evidence and can only be conclusively determined at trial. Where liability, issuance of cheque and dishonest intention are disputed, the matter ordinarily calls for further inquiry within the meaning of section 497(2), Cr.P.C. The offence under section 489-F, P.P.C. is punishable upto three years and does not fall within the prohibitory clause of section 497(1), Cr.P.C. Reliance is placed in the case of **Abdul Basheed v. The State (2023 SCMR 1944)** wherein the Supreme Court has held as follows:

“It is now well-settled, even if the complainant wants to recover his money/damages, resort to civil proceedings is indicated by the legislature to be used for recovery of an alleged amount instead of by abuse of the criminal law, although section 489-F P.P.C. is a penal provision, which cannot be misused to convert a civil dispute into a criminal one. The question of dishonest intention at the time of issuance of cheque is always a question of fact which is to be determined at trial. Where the accused is able to make out a case of further inquiry, he is entitled to the concession of bail.”

7. Reliance is also placed on ***Abdul Basheer v. The State through A.G. KPK & another (2023 SCMR 1958)***, wherein the Supreme Court observed that a cheque under section 489-F, P.P.C. does not fall within the prohibitory clause of section 497, Cr.P.C. and that the normal principles governing bail apply. It was further observed that section 489-F, P.P.C. was not enacted to serve as a tool for recovery of money, which remains within the domain of civil litigation under Order XXXVII of the Civil Procedure Code. It was further held that in cases involving disputed civil liability and contested questions of fact, bail is a rule, and in the said case, despite the maximum punishment being three years, the accused was granted bail.

8. In view of the above discussion, this Court is of the tentative view that the applicant has made out a case of further inquiry. Consequently, the interim pre-arrest bail granted to the applicant vide order dated 13.08.2025 was confirmed on the same terms and conditions vide short order dated 20.11.2025, these being the reasons thereof.

9. The applicant shall continue to attend the trial Court regularly and shall not misuse the concession of bail.

10. Observations made hereinabove are tentative in nature and shall not prejudice either party during trial.

JUDGE