

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No2117 of 2025

Applicant: Jawad Alam through Mr. Muhammad Nazir Tanoli, Advocate.

Complainant: Umer Javed through Mr. Muhammad Ali Phulpoto, Advocate.

The State: Through Ms. Rubina Qadir, Addl. P. G. Sindh

Date of Hearing: 29.01.2026

Date of Order: 29.01.2026

ORDER

TASNEEM SULTANA, J.— Through this criminal bail application, the applicant seeks post-arrest bail in Crime No. 732 of 2025, registered under Section 489-F, P.P.C. at Police Station KIA, Karachi. Prior to filing of the present criminal bail application, the applicant approached the learned XIXth Civil Judge & Judicial Magistrate, Karachi East, by filing post-arrest bail application No. 95 of 2025, which was dismissed vide order dated 04.07.2025. Thereafter, the applicant filed second post-arrest bail application No. 3299 of 2025 before the learned Additional District & Sessions Judge-XIV, Karachi East, which was too dismissed vide order dated 25.07.2025. Hence, the present bail application for the same concession.

2. Brief facts of the prosecution case, are that complainant Umar Javed stated that in the year 2018 he purchased four shops situated at Plot No. ST-1/1, Sector-15, Korangi Industrial Area, Karachi from the applicant for an amount of Rs.1,20,00,000/-, which amount was paid in instalments and possession of shops was handed over to him. After payment, when he demanded transfer of ownership of the said shops, the applicant avoided the same and on insistence issued two cheques bearing No. D-14092780 amounting to Rs.70,00,000/- and cheque No. D-14092781 amounting to Rs.50,00,000/- drawn on Meezan Bank Limited. The said cheques were deposited by the complainant in Bank Al-Falah but were dishonoured on 29.05.2025 due to insufficient funds. Thereafter, complainant approached the Court and on direction present FIR was registered.

3. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case; that the dispute between the parties is purely of civil nature arising out of alleged property transaction; that the complainant has not produced any sale agreement, receipt, payment record or any documentary material to show

that he had purchased the shops from the applicant; that the property in question is trust property of Jama Masjid and the applicant, being an office bearer, had no lawful authority to sell the same; that the complainant was inducted as tenant in the said shops and due to dispute regarding possession and tenancy, the complainant has lodged the present FIR with mala fide intention; that the essential ingredient of legally enforceable liability required under Section 489-F P.P.C. is missing from the record; that the prosecution case is based merely on bald allegation without supporting documentary material; the applicant never issued the cheques towards discharge of any liability; rather, the applicant's cheque book / cheques were stolen or lost and were subsequently misused by the complainant; that there are material factual controversies which cannot be resolved without recording evidence; that the offence does not fall within the prohibitory clause; that the maximum punishment provided is three years; that the applicant is behind bars for about eight months; that the applicant is no more required for investigation as challan has already been submitted; that the trial is likely to take time; that the case squarely falls within the ambit of further inquiry.

4. Conversely, learned D.P.G assisted by learned counsel for complainant submits that the complainant had purchased four shops from the applicant after making payment through instalment's; the possession of shops was handed over to the complainant; when the complainant demanded transfer of ownership, the applicant avoided the same and issued two cheques in favour of the complainant towards discharge of liability; that the said cheques bearing No. D-14092780 and D-14092781 were dishonoured on presentation due to insufficient funds; that the issuance of cheques and dishonour thereof prima facie establishes commission of offence under Section 489-F P.P.C.; that the defence plea taken by the applicant regarding trust property and alleged theft or loss of cheques is an afterthought; sufficient incriminating material is available on record connecting the applicant with commission of offence; and that the bail application is liable to be dismissed.

5. Heard. Record perused.

6. It reflects from the material placed on record that the allegation against the applicant is issuance of two cheques i.e. cheque No. D-14092780 amounting to Rs.70,00,000/- and cheque No.D-14092781 amounting to Rs.50,00,000/-, drawn on Meezan Bank Limited, which on presentation were dishonoured due to reason "Insufficient Funds in Drawer's Account". Conversely, the complainant asserts that the cheque

was consciously issued by the applicant himself towards a subsisting liability and was deposited in the ordinary course of dealings.

7. However, at the same time, the record is silent as to what legally enforceable liability or obligation existed against the applicant on account of which the above cheques were allegedly issued in favour of the complainant. The complainant, at this stage, has not produced any document to show that he had purchased the alleged shops from the applicant or that any sale consideration was legally payable by the complainant to him. It is the specific stance of the applicant that the shops in question are trust property of Jama Masjid and that he had no authority to sell the same and further that his cheques were either stolen, lost and subsequently misused. The questions whether any sale transaction ever took place; whether any legally enforceable liability existed; whether the cheques were issued voluntarily or were misused; and under what circumstances the complainant came into possession of the said cheques, are questions which require recording of evidence and determination by learned trial Court.

8. Admittedly, the applicant is behind bars for about eight months. 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 cheque is purely factual and can only be resolved after recording of evidence by the trial Court, the applicant has made out a case for grant of post arrest bail. Consequently, the applicant namely Jawad Alam is admitted to post-arrest bail subject to furnishing

solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand Only) and P.R bond in the like amount to the satisfaction of learned trial Court.

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

JUDGE