Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

Crl. Bail Application No.696 of 2025

Date	Order with signature of Judge

Aitzaz Hussain son of Gada Hussain Abbasi
Vs.
The State

Mr. Aqeel Hussain, Advocate for the Applicant/Accused.
Mr. Ahteshamul Hassan, Advocate for the complainant.
Ms. Seema Zaidi, Addl. Prosecutor General Sindh.

Date of Hearing & Order : **18.06.2025**

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ARSHAD HUSSAIN KHAN, J: The applicant / accused namely; ***Aitzaz Hussain son of Gada Hussain Abbasi*** seeks post-arrest bail in Crime No.668/2024, under Section 489-F P.P.C. registered at police station Landhi, Karachi. His earlier Criminal Bail Application No.730/2025 was heard and dismissed by the Additional Sessions Judge-XI, Karachi-[East], vide order dated 25.02.2025.

2. The facts of the case need not be reiterated here as the same have already been stated in the FIR, and the bail application.

3. Learned counsel for the applicant/accused submits that the applicant/accused is innocent and has falsely been implicated in the case. There is no reasonable ground to believe that the applicant/accused is guilty of offence with which he stands charged. He has submitted that the story mentioned in the FIR is false, fabricated and concocted, therefore, it requires further enquiry. He has argued that the applicant/accused had not issued cheque but it was stolen and stop payment from drawer is mentioned. That the FIR is silent regarding any description of nature of business which the complainant was allegedly doing with the applicant/accused. He has further argued that the applicant/accused did not issue any cheque to the complainant and signatures of the applicant/accused on the said cheque are bogus and fraudulent. That the dispute between the complainant and the applicant/accused is of a civil nature but the complainant with mala fide intention lodged the instant FIR. He has contended that in the FIR neither any dishonesty is alleged nor any description of any loan or

financial obligation is alleged against the applicant/accused as such no offence under Section 489-F is made out against him. It is settled principle of law that where there are/were business transactions, genuine disputes and contractual obligations, the case could not fall within the ambit of Section 489-F PPC. He has further contended that the alleged offence does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. therefore, the accused / applicant is entitled for bail. The learned trial court as well as the appellate court did not apply their judicial mind on the ground of non-prohibitory clause. That the applicant/accused is neither previously convicted criminal nor have any criminal record. He has further contended that all the evidence alleged against the applicant/accused is documentary evidence, which is in possession of the prosecution as such there is no apprehension of tempering with the evidence. Lastly, he has prayed that the applicant / accused is behind the bars as such he may be released on bail at this stage. He has relied upon the cases reported as 2014 P.Cr.L.J 1060, 2023 SCMR 2122, 2023 SCMR 1977, 2009 SCMR 299, 2011 SCMR 1708, 2-013 P.Cr.L.J., 2009 SCMR 299 and 2012 P.Cr.L.J.217.

4. Learned counsel for the complainant has contended that Section 497 Cr.P.C. is not the rule of universal application, therefore, the domain of prohibitory clause has to be seen through its own facts and circumstances. He has further contended that the grounds of bail application are based on concocted story, the application being devoid of any merit may be dismissed.

5. Learned Additional P.G. while supporting the impugned order submits that instant bail application may be dismissed as the applicant / accused dishonestly issued subject cheque to the complainant and sufficient material is available on the record, which prima facie connects the applicant with the alleged crime.

6. I have heard learned counsel for the parties as well as learned Additional Prosecutor General and perused the material available on the record.

From perusal of the record, it appears that there is a delay of about two (02) months in lodging of the FIR, for which no plausible explanation has been given, which makes the case of further inquiry into the guilt of the applicant as provided under section 497 Cr.P.C.

Furthermore, dishonest intention, if any, for issuing the cheque in question is yet to be proved after recording of evidence as this Court can only take a tentative view of the matter and cannot presume dishonesty on the part of the applicant as any such determination would prejudice his right of a fair trial.

Merely, receiving a huge amount of money in a business transaction and its subsequent not delivery to the concerned person requires declaration on the subject by the competent court of law and as such there are remedies available to the aggrieved party, however at this stage this court cannot determine the validity of such transaction between the parties on the subject issue at the bail stage, therefore, the controversy between the parties seems to be of a civil nature based on documentary evidence as per narration made by the complainant in the FIR.

7. It is also observed that every transaction where a cheque is dishonored may not constitute an offense. There are four ingredients of Section 489-F PPC, firstly, dishonest issuance of cheque, secondly, cheque must be issued for repayment of loan or discharge of liability, thirdly, cheque must be dishonored and fourthly, it must be dishonored at the fault of accused and not on the part of Bank. To prove the charge against an accused under Section 489-F. P.P.C. all the ingredients of section 489-F, P.P.C. must be proved through cogent evidence and beyond any shadow of a doubt, however this aspect of the case is to be determined by the trial court under what circumstances, the cheque was issued and what was the intention of the person, issuing it. Hence, the allegations levelled against the applicant could only be determined by the trial court after recording and evaluating the evidence.[1] It is also settled principle of law that at the bail stage deeper appreciation into merit of the case cannot be undertaken and only tentative assessment of the material available is to be made. Moreover, as per the Progress Report dated 14.06.2025 filed by the concerned court, the case has been challaned, and the matter is fixed for evidence. Seemingly, the applicant is no longer required for further investigation, nor has the Prosecution claimed any exceptional circumstances, as such, keeping the applicant behind bars would serve no fruitful purpose.

[1] *Manzoor Hussain and 5 others v. The State* [2011 SCMR 902].

7. It may also be observed that the offence under section 489-F, P.P.C. though non-bailable but does not fall within the prohibitory clause of section 497, Cr.P.C. Prima facie, section 489-F, P.P.C. is not a provision, which is intended by the Legislature to be used for recovery of an alleged amount. It is only to determine the guilt of a criminal act and award of a sentence, fine or both as provided under section 489-F, P.P.C. Since the offence alleged against the applicant/accused falls outside the prohibitory clause of Section 497, Cr.P.C. and in such like case grant of bail is a rule and refusal is an exception[2].

8. In view of the above discussion, I am of the opinion that the applicant/accused is entitled for grant of bail. Resultantly, the bail application was allowed by my short order dated 18.06.2025 and the applicant/accused was admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.2,00,000/- and P.R bond in the like amount to the satisfaction of trial court.

Needless to mention here that any observation made in this order is tentative in nature and shall not affect the determination of the facts at the trial or influence the trial court in reaching its decision on the merits of the case. It is, however, made clear that in the event if, during proceedings, the applicant/accused misuses the bail, then the trial court would be competent to cancel his bail without making any reference to this Court.

Above are the reasons of my short order dated 18.06.2025.

JUDGE

Jamil

[2] *Tariq Bashir and 5 others v. The State* [PLD 1995 SC 34], *Mohammed Tanveer v. the state* [PLD 2017 Supreme Court 733] and *Abdul Saboor v. The State through A.G. KPK and another* [2022 SCMR 592]