

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Crl. Bail Application No.1288 of 2025

Date	Order with signature of Judge
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Sheikh Habib Rafiq son of Rafiq-ur-Rehman
Vs.
The State

M/s. Syeda Sara Kanwal and Muhammad Shahid Mohal, Advocates for the Applicant/Accused.
Mr. Muhammad Nawaz, Advocate along with complainant.
Mr. Mumtaz Ali Shah, Addl. Prosecutor General Sindh.

Date of Hearing & Order : 17.06.2025

ARSHAD HUSSAIN KHAN, J: The applicant / accused namely; Sheikh Haibib Rafiq son of Rafiq-ur-Rehman seeks post-arrest bail in Crime No.219/2025, under Section 489-F P.P.C. registered at police station Aziz Bhatti, Karachi. His earlier Criminal Bail Application No.2058/20235 was heard and dismissed by the Additional Sessions Judge-XIII, Karachi-[East] vide order dated 15.05.2025.

2. The facts of the case need not be reiterated here as the same have already been stated in the FIR, impugned order 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 malafidely. That the complainant lodged the FIR after a delay of 02 months for which no plausible explanation has been given by the complainant which creates doubt and need further inquiry. He has further argued that originally agreement executed between the present applicant/accused and Mr. Rabbani on 26.04.2024 for purchasing the scrap but lateron the complainant pressurized the applicant/accused to execute another agreement with him. That the applicant / accused did not give any single cheque, at his own, to the complainant but the complainant and his companions visited the house of applicant / accused along with weapons and forcibly took the signatures of the applicant/accused upon the so called agreement for which he has moved applications to the concerned police station and the Bank-Al-Falah. He has further contended that the agreement itself is not sufficient in the eyes of law as such no specific time for returning the amount has been mentioned in the agreement neither it provided any favour to the complainant. He has submitted that the applicant / accused is old age heart patient and would face hardship in the jail and cannot survive there. The dispute is also of civil nature and the complainant is trying to indulge the present applicant in

criminal case. He has further contended that the alleged offence does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. and the law prescribe that the bail is better than jail hence the accused / applicant is entitled for bail. It is argued that the complainant has already instituted a summary suit against the present applicant / accused which is *sub judice* before the trial court. That the allegations against the applicant/accused are totally false as he has no concern with the commission of the alleged offence. He has further argued that the learned trial court failed to apply its judicial mind that the applicant moved an application before the police station Ferozabad regarding the cheques taken by the complainant on gun-point. 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 hardened criminal nor absconder and there is no probability of the accused of being absconder or to exercise any commission of crime. He also submits that the applicant / accused is behind the bars as such he prays that he may be released on bail at this stage.

4. Learned counsel for the complainant has contended that the complainant has paid Rupees One Crore through different modes of payment for the investment in the scraping business to the applicant/accused. The applicant/accused, in this regard, made agreement dated 21.11.2024 and issued two cheques viz. Cheque No.95475790 dated 10.12.2024 and 95475791 dated 10.01.2025, which upon presentation have been dishonoured. He has contended that Section 497 Cr.P.C. is not 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 tentative assessment of the record, it appears that there is a delay of more than two (02) months in lodging of 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. 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 27.05.2025 filed by the concerned police station the case has been challaned; seemingly the applicant is no more required for further investigation nor the prosecution has claimed any exceptional circumstance, as such, keeping the applicant behind the bars would not serve any fruitful purpose.

7. It may be observed that the offence under section 489-F, P.P.C. is 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 exception².

8. In view of the above facts and circumstance, I am of the opinion that the applicant has made out the case for grant of post-arrest bail. Resultantly, the bail application was allowed and Applicant was admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.3,00,000/- and P.R bond in the like amount to the satisfaction of trial Court, by my short order dated 17.06.2025.

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 17.06.2025.

JUDGE

Jamil

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

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]