

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.865 of 2025

Applicant : Faqir Syed Zain Ul Abedin son of Faqir Syed Imtiaz Uddin, through Mr. Zahid Ali Maitlo, Advocate

Respondent : The State, through Mr. Muhammad Mohsin, Mangi, APG

Complainant : Muhammad Shoaib son of Islamuddin, through Mr. Mudasir Hussain, Advocate

Date of Hearing : 25.06.2025

Date of Order : 25.06.2025

ORDER

TASNEEM SULTANA, J: Through instant Criminal Bail Application, the Applicant, Faqir Syed Zain Ul Abedin son of Faqir Syed Imtiaz Uddin seeks pre-arrest bail arising out of FIR No.18 of 2025, registered at police station Mithadar, under Section 489-F, 34 PPC. Earlier, his Bail Before Arrest Application bearing No. 927 of 2025 was dismissed by the learned Additional Sessions Judge-V, Karachi (South), vide order dated 26.03.2025. He was admitted to interim bail by this Court, vide order dated 28.03.2025, now the matter is fixed for the confirmation of the same or otherwise.

2. Brief facts of the case, as disclosed in the FIR lodged on 10.02.2025 by the complainant Muhammad Shoaib son of Islamuddin are that on 27.07.2023 he sold his residential House No.R-79, Sector B/19, Shah Latif Town to (1) Rao Tasawar Iqbal (2) Imran Lashari (3) Imtiaz Khushik and (4) Faqeer Syed Zainul Abidin to the tune of Rs16500000/- against which Rao Tasawar Iqbal promised to give his constructed House No.N/1182-1183 Street Shah Latif Town. The complainant handed over possession of his house along with original documents to Rao Tasawar Iqbal but the above named persons failed to deliver possession of House No.N/1182-1183 to the complainant. During Jirga the said persons admitted and agreed to pay Rs.15000000/- to complainant. The said Rao Tasawar Iqbal and applicant being partners issued a Cheque No.58565882, dated 10-05-2024 for the amount of Rs.15000000/-

to the complainant from their joint bank account. However, the cheque was dishonoured when presented to the concerned bank, leading to the registration of the subject FIR against the applicant.

3. Learned Counsel for the applicant contended that the applicant is innocent and has been falsely implicated in this case by the complainant due to malafide intention and ulterior motives; that the applicant having its own business of different categories in the name of M/s Rempex Corporation; that the applicant and one Rao Tasawwar Iqbal being a business partner entered into a business partnership agreement on 16.01.2024 wherein the said Rao Tasawwar Iqbal agreed to invest an amount of Rs.400,000,000/- into the business of applicant on partnership basis of profit and loss and was agreed that he will deposit the said amount into joint bank account opened with the applicant; that in this regard, the said Rao Tasawwar Iqbal issued two cheques of Rs.400,000,000/- each amounting to Rs.200,000,000/-, in terms of agreed business partnership agreement; that Rao Tassawer Iqbal taken the remaining 23 cheques from 5856828 to 58565850 with the signature of applicant on few cheques; that the applicant time and again trying to contact with the said Rao Tasawwar Iqbal, but he is not responding since long; that said Rao Tasawwar Iqbal also issued 23 Cheques of the applicant's signature to some unknown persons without his consent; that the applicant received information that said Rao Tasawwar Iqbal is a habitual fraud person; that the dispute between the parties is of civil in nature; that basic ingredient to attract Section 489-F is completely missing and complainant did not mention any obligation or dishonest intention; that the applicant is not previously convicted nor a habitual offender; hence, prayed for confirmation of interim pre-arrest bail.

4. Learned A.P.G, assisted by the Counsel for the complainant, vehemently opposed the grant of bail application; that bank record shows the cheque was dishonored due to insufficient funds; that no malafide on

the part of complainant or police has been attributed by the applicant; that there is no denial of signature of applicant on the alleged cheque, which was dishonored; that applicant remained fugitive from law and even failed to appear before trial Court after seeking interim pre-arrest bail from this Court, he also submitted copy of NBW dated 13-06-2025 issued on 05.06.2025; that applicant is not entitled for confirmation of bail.

5. Heard. Record perused.

6. Prima facie allegation against present applicant are clear and specific. Issuance of cheque in question and subsequent non-payment from the concerned bank are matters of record. Mere assertion of applicant that co-accused Rao Tasawar Iqbal misused the same cheque do not found convincing at this early stage. I am mindful of the fact that the offence under Section 489-F, PPC does not fall within the prohibitory clause of Section 497, Cr.P.C and that bail in such matter is rule and refusal is exception as per Tariq Bashir and 5 others v. The State, (PLD 1995 SC 34) and Muhammad Tanveer v. The State (PLD 2017 SC 733).

The grounds for the case to fall within the exception meriting denial of bail include (a) where there is likely hood of abscondance of the accused; (b) where there is apprehension of the accused, tempering with the prosecution evidence; (c) where there is a danger of the offence being repeated, if the accused is release on bail; (d) where the accused is a previous convict.

7. It reflects from the progress report of trial Court that on 29.03.2025 I.O. submitted report under section 173 Cr.P.C. (Challan) against Rao Tassawar Iqbal and Faqir Syed-ul-Abidin (applicant) under section 512 Cr.P.C. On 04.06.2024 police arrested accused Rao Tasawar Iqbal, whereas applicant is still absconder and trial Court issued NBW against him. As per progress report case was fixed on 28.06.2025 for further proceedings.

8. It is a well settled exposition of law that grant of pre-arrest bail is an extraordinary relief which may be granted in extra ordinary situation to protect the liberty of innocent persons in cases lodged with mala fide intention to harass the person with ulterior motives. By all means while applying for pre-arrest bail, the applicant/accused has to satisfy the Court with regard to the basic conditions enumerated in Section 497 of the Code of Criminal Procedure, 1898 (Cr.P.C.) vis-à-vis the existence of reasonable ground to believe that he is not guilty of the offence alleged against him and the case is one of further enquiry. In the case of Rana Abdul Khaliq V. The State and others (2019 SCMR 1129), Apex Court observed that grant of pre-arrest bail is an extra-ordinary remedy in criminal jurisdiction; It is diversions of the usual course of law, arrest in cognizable cases; a protection to the innocent being hounded on trump up charges though abuse of process of law, therefore, an accused seeking judicial protection is required to reasonably demonstrate that intended arrest is calculated to humiliate him with taints of mala-fide; It is not a substitute for post arrest bail in every run of the mill criminal case as it seriously hampers the course of investigation.

9. Since the case of Hidayatullah Khan V. The Crown (PLD 1949 21), the principle of judicial protection are being faithfully adhered to. Therefore, grant of pre-arrest bail essentially requires consideration of mala fide, ulterior motives or abuse of process of law, situations wherein Court must not hesitate to rescue innocent citizen; these consideration are conspicuously missing in the present case. While in case of Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 SC 427), the Apex Court has discussed the frame work and guide line for granting bail before arrest under section 498 Cr.P.C. by the High Courts and Courts of Sessions. It was held that the exercise of this power should be confined to cases in which not only a good prima-facie ground is made out for the grant of bail in respect of offence alleged, but also it should be shown that if the accused where to be arrested and refused bail, such an

order would in all probability be made not from motives of furthering the ends of justice in relation to the case from some ulterior motive, and with the object of injuring the accused or that the accused want in such an eventuality suffer irreparable harm. The Apex Court in case of Ahtesham Ali v. The State (2023 SCMR 975) laid down following parameters for pre-arrest bail.

“(a) grant of bail before arrest is an extraordinary relief to be granted only in extraordinary situations to protect innocent persons against victimization through abuse of law for ulterior motives;

(b) pre-arrest bail is not to be used as a substitute or as an alternative for post-arrest bail;

(c) bail before arrest cannot be granted unless the person seeking it satisfies the conditions specified through subsection (2) of section 497 of Code of Criminal Procedure i.e. unless he establishes the existence of reasonable grounds leading to a belief that he was not guilty of the offence alleged against him and That there were, in fact, sufficient grounds warranting further inquiry into his guilt;

(d) not just this but in addition thereto, he must also show that his arrest was being sought for ulterior motive, particularly on the part of the police; to cause irreparable humiliation to him and to disgrace and dishonour him;

(e) such a petitioner should further establish that he had not done or suffered any act which would disentitle him to a discretionary relief in equity e.g. he had no past criminal record or that he had not been a fugitive at law; and finally that;

(f) in the absence of a reasonable and a justifiable cause, a person desiring his admission to bail before arrest, must, in the first instance approach the Court of first instance i.e. the Court of Session, before petitioning the High Court for the purpose.”

10. It is settled principle of law while entertaining bail plea of any accused court has only see whether accused is connected with the commission of crime or not. Furthermore, the question of granting and refusing bail depends upon particular circumstance of each case. Herein present case applicant after seeking interim pre-arrest bail from this Court neither join the investigation nor Trial Court and remained fugitive from law, which is evident from progress report dated 24.06.2025. The above conduct of applicant itself disentitle him for this extra ordinary relief, hence bail application was dismissed at the conclusion of the hearing vide short order dated **25.06.2025**, whereby interim pre-arrest bail granted to the applicant was recalled and above are the reasons of short order.

11. Before parting with the above findings are tentative in nature, which order no help to any party.

JUDGE

Fahcem/PA

