

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Jawad Akbar Sarwana

Criminal Misc. Application No.690 of 2025

Applicant : Hassan Saeed s/o Muhammad Saeed  
through Mr.Qaim Ali Memon, Advocate

Respondent No.1 : The State

Respondent No.2 : Learned VIIIth Additional Sessions Judge  
South Karachi

Respondent No.3 : Muhammad Saqib Khan s/o Khalil Khan

Date of Hearing : 08.08.2025

Date of Decision : 26.08.2025

## **ORDER**

**Jawad Akbar Sarwana, J.:** Hassan Saeed/applicant-complainant has filed on 05.08.2025, this Cr. Misc. Appln. under Section 497(5) Cr.P.C., for cancellation of bail in FIR No.362/2024 u/s 489-F P.S. Baloch Colony, Karachi, extended to the respondent no.3/accused, Muhammad Saquib Khan. He is aggrieved by the impugned Order dated 22.01.2025 passed by the 8th Additional Sessions Judge South, Karachi ("the trial Court"), allowing the bail application no.215/2025 filed by the respondent no.2/accused based on an affidavit of No Objection filed by the applicant-complainant. The applicant-complainant has not filed any application before the trial Court; instead, he has filed this application, in the first instance, before the High Court.

2. The brief background of the matter is that on 12.12.2024, the applicant-complainant got lodged FIR No.362/2024 u/S 489-F Cr.P.C. against the respondent no.3/accused concerning a bounced/dishonoured cheque drawn on UBL Bank Ltd., Shahrah-e-Faisal Branch, Karachi in the sum of Rs.2,200,000/-. On 16.01.2025, the respondent no.3/accused filed a pre-arrest bail application before the trial Court, wherein vide Order dated 16.01.2025, interim pre-arrest bail

was granted subject to furnishing of surety in the sum of Rs.200,000/- with PR bond in the like amount.

3. It is not known if the respondent/accused subsequently arranged for surety except that on 22.01.2025, the applicant-complainant filed an affidavit of No Objection to the bail application stating in paragraph 3 of the said affidavit that the respondent no.3/accused had deposited in the appellant's bank account a sum of Rs.200,000 and a balance sum was to be paid by way of six (6) cheques spread over five (5) months with the sixth (6) and final post-dated cheque dated 18.07.2025. When the trial Court passed its impugned Order dated 22.01.2025, it noted as follows in paras 8 and 9:

“8. From perusal of the record, it appears that the alleged offence is the compoundable offence in which the complainant has given no objection, on the basis of such no objection of complaint, the learned ADPP for the state has also given no objection to confirm the bail.

9. Keeping in view the above mentioned circumstances and in the interest of justice, the interim bail of the applicant/accused namely, Muhammad Saqib s/o Khalil Khan is hereby confirmed on the same terms and conditions.”

4. Learned Counsel for the applicant-complainant submitted that this application for cancellation of bail based on a consent order passed by the trial Court is maintainable before the High Court even though the applicant has not approached the trial Court. He contended that the bail is liable to be set aside by this bench as respondent no.3/accused has allegedly violated the terms of the compromise. He relied on the case-laws reported in Muhammad Mazhar Iqbal v. The State and Another, PLD 2011 Lahore 306, Muhammad Yasir Mehmood v. Syed Sibte-e-Haider Zaidi and Another, 2022 YLR Islamabad 1046, and Azeem-ud-Din v. Feroze Khan and Another, 2024 PCr. L.J. Lahore 1364.

5. After hearing the Counsel for the applicant-complainant, this list was reserved for orders on the maintainability of the misc. application.

6. Heard counsel, who admits/concedes that:

- (a) There is no challenge to the compromise order dated 22.01.2025 passed by the trial Court available on record, and the present application before this bench (of the High Court) is the first such challenge to the trial Court's Order dated 22.01.2025;
- (b) The affidavit of No Objection dated 22.01.2025 filed by the applicant in the trial Court mentioned a total of six (6) different cheques in the sum of Rs.350,000/- each handed over by the respondent no.3/accused to the applicant, the value of which comes to Rs.2,100,000/- and,
- (c) The application filed by the applicant in the High Court on 05.08.2025 does not mention the total outstanding amount payable by the respondent no.3/accused to the applicant, except that as of its filing date, the respondent no.3/accused had paid to the applicant an amount of Rs.450,000/-.

7. The admission in paragraph 6 (a) above means that the impugned compromise bail Order has neither been appealed nor reviewed by the trial Court. Instead, the applicant is asserting the setting aside of the bail-granting order without first approaching the trial Court, which is the Court that passed the said Order in the first place. The applicant cannot be allowed to leap-frog the hierarchy of challenges embedded in the criminal procedure code. The applicant must first exhaust its remedy before the competent Court that passed the Order which he is aggrieved by before filing this application for cancellation of bail before the High Court.

8. The trial Court recorded the terms of the bail-granting compromise order, and it is the same Court that must be approached first, as it is the Court that set the terms of the bail based on the affidavit of No Objection. The affidavit states that the applicant-complainant accepted that if, in the future, the above-mentioned cheques are dishonoured for any reason, the applicant-complainant shall take legal action against the accused. The affidavit did not provide any explanation of what is meant by “shall take legal action against the accused”? Neither the terms of the affidavit stated that if the cheques bounced, then the bail-granting Order would stand recalled, nor did the applicant-complainant articulate such a proposal in the affidavit of No Objection, nor did the trial Court record any conditions of re-calling its bail-granting Order. The trial Court, which passed the bail-granting order, considered the affidavit of no objection and decided the terms of the bail-granting order, including which terms to incorporate from the affidavit of no objection. The trial Court is the proper forum to determine the cancellation of such an order and not the High Court.

9. The further upshot of the applicant’s Counsel’s admission as set out in paragraphs 6(b) and (c) above is that after the bail-granting Order, the veracity of the applicant-complainant’s statement needs to be verified by the trial Court, which recorded the affidavits and counsel submissions. The Counsel attached photocopies of three (3) post-dated cheques out of six (6) and four (4) cheque return memos issued by Meezan Bank Ltd. pertaining to four (4) post-dated cheques dated 16.03.2025, 16.04.2025, 17.05.2025, and 18.06.2025, all such four (4) cheques date-stamped 04.07.2025 for clearing. But the amount owed after 22.01.2025 in the bail proceedings does not tally. It is the trial Court that has to decide in its wisdom if a case is made out to either call or not to call the respondent no.3/accused to verify the genuineness of the alleged default in payment of instalments and/or deal with its

consequences. The High Court is not the proper forum to decide such matters at this stage.

10. The trial Court is also the proper forum because it may well be the same forum for the trial of FIR No.362/2024 u/s 489-F.P.S. Baloch Colony, Karachi, notwithstanding that the applicant-complainant has not submitted any document regarding the current status of the Criminal Case after the impugned bail-granting compromise order dated 22.01.2025, which the applicant-complainant now wishes to recall. Further, no update was provided during oral submissions, either, regarding the subsequent developments in the Criminal Case before the trial Court after the filing of the affidavit of no objection to the bail.

11. Finally, the respondent no.3/accused, regardless of whether he has violated the terms of the compromise, if the High Court takes up this matter now, it will also deprive the respondent no.3/accused of the opportunity of appeal to the available forums to the aggrieved party in these cancellation of bail proceedings. This (High) Court must provide both parties with equal opportunities for appeal/challenges. Accordingly, for all the above reasons, the High Court cannot consider the cancellation of bail, at this stage, which matter involves issues best suited for the trial Court to decide as per law.

12. Finally, this bench turns to the three reported judgments relied upon by the applicant-complainant. The case of Muhammad Mazhar Iqbal v. The State and Another, PLD 2011 Lahore 306, is not relevant as it concerns the applicant-complainant's choice to pursue a complaint under either the PPC or the Financial Institutions (Recovery of Finances) Ordinance, 2001. The facts of this case are entirely different from the case in hand. With regard to Muhammad Yasir Mehmood v. Syed Sibte-e-Haider Zaidi and Another, 2022 YLR Islamabad 1046, this case does not deal with a bounced cheque after a compromise was reached between the parties during pendency of bail proceedings. The Muhammad Yasir

Mehmood case deals with dishonoured cheque(s) arising out of a settlement agreement executed prior to the registration of an FIR. In Azeem-ud-Din v. Feroze Khan and Another, 2024 PCr. L.J. Lahore 1364, the trial Court, which allowed the bail-granting order based on the compromise, was the same Court that the legal heir of the deceased approached by way of filing an application to cancel a bail under Section 497(5) Cr.PC. (paragraph 1 of the reported Judgment) seeking cancellation of the bail as the post-dated cheques issued by the accused, in favour of his late father, had bounced. According to the facts, the accused accepted the compromise with the late father of the accused, and his liability. Thus, the same Court which passed the bail-granting order, in the facts and circumstances of the case, then cancelled the bail application. Here, unlike the Azeem-ud-Din case, the compromise was not recorded by this (High) Court, but the trial Court. Therefore, this (High) Court cannot take up the applicant-complainant's lis, at this stage, on this score, too.

13. For the above reasons, the misc. application is found not to be maintainable, and is hereby dismissed.

**J U D G E**