

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.848 of 2025

Applicant : Shahzaib Malik
through Mr. Siraj Ahmed Mangi, Advocate

Respondent : The State
through Ms. Seema Zaidi, Additional
Prosecutor General.

Date of hearing : 10.04.2025

Date of order : 10.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – The applicant, Shahzaib Malik, seeks pre-arrest bail in a case bearing crime No. 838/2023, offence u/s 489-F PPC of Police Station Ferozabad, Karachi. His earlier plea for pre-arrest bail was declined by the learned VIII Additional Sessions Judge, Karachi East, vide order dated 21.12.2024.

2. Briefly stated, the facts of the case are that the complainant, engaged in the business of garments, allegedly supplied clothing items to the applicant and his brother, Sheraz Anwar, to the tune of Rs.3,735,190/-. It is claimed that in partial discharge of the said liability, a total of six cheques were issued, which upon presentation, were dishonored, prompting the lodging of the present FIR.

3. Learned counsel for the applicant contends that the applicant has been falsely implicated at the behest of the complainant owing to longstanding family relations. He submits that the cheques in question were not issued by the applicant but by his brother Sheraz, and that the present applicant neither drew nor signed the dishonoured instruments. He further argues that there is an unexplained delay of ten days in the registration of the FIR, and the dispute, if any, is purely of a civil nature. He relied upon *Muhammad Anwar v. The State* (2024 SCMR 1567) to submit that bail may be granted where a foundational element of the offence is lacking.

4. Conversely, the learned Assistant Prosecutor General, while opposing the confirmation of interim bail, submits that the cheques were issued in discharge of a financial obligation and not as security. She nonetheless concedes that the offence under Section 489-F PPC does not fall within the prohibitory clause of Section 497 CrPC.

5. Upon tentative assessment, it appears that the business transaction, as described, involves substantial dealings between close family members. The applicant's stance that the cheques were issued by his brother Sheraz, and not by him, raises a material question of fact, particularly in view of the admitted familial and financial ties between the parties. Furthermore, it is the consistent view of superior courts, including in *Mian Allah Ditta v. The State* (2013 SCMR 51) and *PLD 2012 Sindh 464 (Malik Safdar Ali)*, that in order to attract Section 489-F PPC, the prosecution must prima facie establish that the dishonoured cheque was issued with dishonest intent, and in discharge of an existing loan or obligation.

6. The Supreme Court in *Abdul Saboor v. The State* (2022 SCMR 592) and *Noman Khaliq v. The State* (2023 SCMR 2122) has categorically held that Section 489-F is not a recovery mechanism, and where foundational ingredients of the offence are lacking or the matter involves factual disputes regarding liability, bail ought to be granted as further inquiry is required. Likewise, in *Mazhar Iqbal v. The State* (2006 YLR 406), bail was confirmed where dishonesty was not prima facie established.

7. The alleged role of the applicant appears to hinge more on association than on documentary liability. Even if the dispute entails cheating or inducement, at best, it may fall within the ambit of Section 420 PPC, which is a bailable offence. In any case, the delayed FIR, the civil nature of the dispute, the absence of direct attribution of the dishonoured cheques to the applicant, and the non-prohibitory clause nature of the offence cumulatively render the case one of further inquiry. These principles have also been echoed in *Muhammad Iqbal v. The State* (2018 YLR Note 157) and *Muhammad Ashraf v. The State* (2021 PCrLJ 586), wherein bail was granted where key ingredients under Section 489-F PPC were either doubtful or lacking.

8. Accordingly, the applicant has made out a case warranting confirmation of interim pre-arrest bail. The interim pre-arrest bail granted to the applicant, Shahzaib Malik, vide order dated 27.03.2025 is hereby confirmed on the same terms and conditions. Needless to mention, the observations made hereinabove are tentative in nature and shall not influence the trial Court while deciding the case on merits.

JUDGE