

## IN THE HIGH COURT OF SINDH AT KARACHI

### Criminal Bail Application No.712/2025

Applicant : Muhammad Irfan son of Muhammad Ameen  
through Mr. Samiullah Soomro, Advocate

Respondent : The State  
through Mr. Qamaruddin Nohri DPG, Sindh

Date of hearing : 16.04.2025

Date of order : 21.04.2025

### **ORDER**

**KHALID HUSSAIN SHAHANI, J.** – Applicant Muhammad Irfan, seeks post-arrest bail in a case bearing Crime No.1086/2024, offence u/s 489-F PPC of P.S Sharah-e-Faisal, Karachi. Bail of applicant was declined by learned J.M-XV Karachi East vide order dated: 28.02.2025 and learned Additional Sessions Judge-I Karachi East vide order dated: 11.03.2025.

2. The case of the prosecution, briefly stated, is that the applicant, being a friend of the complainant, allegedly obtained a monetary loan of Rs. 2,000,000/- from the complainant Muhammad Javed on 16.03.2024, with an express promise to return the same within a period of two months. However, despite the lapse of time, the applicant failed to return the said amount and continued to delay repayment on one pretext or another. It is alleged that to discharge part of this liability, the applicant issued a cheque bearing No. 2001321516, drawn on MCB Bank, Banori Town Branch, Karachi, dated 15.08.2024, in the sum of Rs. 1,000,000/-. The said cheque, upon presentation, was dishonoured. Consequent upon; FIR was lodged inter alia on above facts.

3. Learned counsel contended that the applicant has been falsely implicated in this matter with malafide intent. He submits that the parties were engaged in a business relationship involving mutual commercial dealings, particularly in the trade of fabric, and the impugned cheque was issued merely as a security instrument, not towards the discharge of any enforceable liability. Learned counsel argues that mere dishonour of a cheque given as security does not attract the mischief of Section 489-F, P.P.C., unless accompanied by a clear element of dishonesty. He further submits that the matter essentially pertains to civil liability,

and criminal law is being misused to pressurize the applicant. He further submits that the offence alleged does not fall within the prohibitory clause of Section 497(1), Cr.P.C., the maximum punishment being three years. It is argued that where the offence is non-cognizable and carries less severe punishment, the grant of bail is the rule, while refusal is an exception. It is next argued that the applicant has been in custody and the investigation has already been concluded, hence his further incarceration serves no fruitful purpose. The learned counsel urged that the case at best calls for further inquiry within the meaning of Section 497(2), Cr.P.C., and the applicant may be released on bail.

4. Conversely, learned DPG for the State has opposed the grant of bail. He submits that a specific allegation has been levelled against the applicant regarding the issuance of a cheque towards repayment of a loan, and the dishonour of such cheque substantiates the essential ingredients of the offence under Section 489-F, P.P.C. He argued that the complainant parted with a substantial amount of money relying upon the promise of repayment by the applicant, and the subsequent act of issuing a cheque, which was dishonoured, reflects prima facie dishonest intent. Learned DPG further contended that financial loss has been caused to the complainant, and such offences, though not falling within the prohibitory clause, affect public confidence in commercial transactions and must not be treated lightly. However, he conceded that the investigation has been completed and the accused is no longer required for custodial interrogation.

5. Undoubtedly, the law requires that for constituting an offence under Section 489-F, P.P.C., the cheque must have been issued with dishonest intent for repayment of a loan or discharge of an obligation, and that the cheque was dishonoured. In the case in hand, there exists a record of prior financial transactions between the parties, which gives rise to a plausible defence that the impugned cheque may have been issued in the context of ongoing commercial dealings, and not necessarily to discharge a crystallized liability. Whether the cheque was issued by way of security or in satisfaction of an existing debt is a question that requires evidence and can only be conclusively determined at the time of trial. Reliance is placed on the precedents laid down in case of *Mian Allah Dad Vs. The State & others* (2013 SCMR 51), *Mian Muhammad Akram Vs. The State & others* (2014 SCMR

1369) and *Muhammad Iqbal Vs. The State & another* (2018 YLR Note 157).

6. In above circumstances, the case certainly calls for further inquiry as envisaged under Section 497(ii), Cr.P.C. The applicant is behind bars; the investigation stands completed; and he is no longer required for investigative purposes. Moreover, the offence does not fall within the prohibitory clause of Section 497(1), Cr.P.C., and it is by now well settled that in such matters, grant of bail is a rule while its refusal is an exception. In this regard, reference may be made to the principles laid down in *Muhammad Tanveer v. The State* (PLD 2017 SC 733) and *Abdul Saboor v. The State* (2022 SCMR 592) and in case of Riaz Jafar Natiq Vs. The State (2011 SCMR 1708) wherein the Honourable Supreme Court emphasized the paramount importance of personal liberty in cases not falling within the prohibitory clause and held that;

***"Thus keeping in view the law laid down in the case of Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488) ordaining that where a case falls within non- prohibitory clause the concession of granting bail must be favorably considered and should only be declined in exceptional cases. We do not find this to be a case where it should be refused as an exception. Thus, this petition is converted into appeal and the same is allowed."***

7. I have carefully considered the contentions raised by counsel for both parties and have gone through the case laws relied upon. Criminal culpability of the applicant regarding dishonestly issuing cheque would be determined during trial. Accordingly, the facts reported in the case of Abdul Saboor v. the State through A.G. Khyber Pakhtunkhwa and another (2022 SCMR 592), being relevant to the above case in hand are referred as under: -

***"As per the contents of the crime report, the petitioner was running a business of poultry, he borrowed some amount from the complainant and to settle the same, he issued the cheque in question to the complainant, which has been dishonored. It is an admitted position that the petitioner is behind the bars for the last six and half months whereas the maximum punishment provided under the statute for the offence under section 489- F, P.P.C. is three years and the offence does not fall within the prohibitory clause of section 497, Cr.P.C. It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception. This Court in Muhammad Tanveer v. The State and another (PLD 2017 SC 733) has held that "once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception then the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special***

***Courts." Prima facie section 489-F of 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. On the other hand, for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of C.P.C. At this stage, only a tentative assessment of the matter is required and we cannot presume dishonesty on the part of the petitioner as any such determination would prejudice his right to a fair trial guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. Liberty of a person is a precious right which cannot be taken away without exceptional foundations. The law is very liberal especially when it is salutary principle of law that the offences which do not fall within the prohibitory clause, the grant of bail is a rule while its refusal is mere an exception."***

The Hon'ble Apex Court in case of *Abdul Saboor* (supra) held:

***"Prima facie Section 489-F of 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... For recovery of any amount, civil proceedings provide remedies under Order XXXVII of the C.P.C... We cannot presume dishonesty at this stage as it may prejudice the right of the accused to a fair trial."***

8. In view of the foregoing, and taking into account the tentative assessment of the material on record, I am of the opinion that the applicant has succeeded in making out a case for further inquiry. Accordingly, the application is allowed. The applicant Muhammad Irfan shall be released on bail subject to furnishing a solvent surety in the sum of Rs.1,000,000/ (Rupees One million only) and a personal bond in the like amount to the satisfaction of the learned trial Court. Needless to state, the observations made herein are purely tentative in nature and shall not influence the learned trial Court at the time of final adjudication of the case.

**JUDGE**