

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 3011 of 2024

Applicant : Syed Muhammad Asif Ali Akhter,
Through Mr. Nadeem Ahmed Azar, Advocate

Respondent : The State
Through Ms. Rahat Ehsan, Addl. P.G.

Date of hearing : 14.05.2025

Date of order : 19.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Syed Muhammad Asif Ali Akhter seeks pre-arrest bail in a case bearing crime No.300/2022, offence under Section 489-F PPC of P.S North Karachi Industrial Area (NKIA), which alleges dishonor of cheques issued by the applicant in the capacity of a guarantor for a business transaction. Previously bail of applicant was declined by the court of learned Additional Sessions Judge-V Central vide order dated 19.12.2024.

2. The complainant, Rashid Khan Mugal, claims that he extended a loan to one Muhammad Amjad, who in turn sought the applicant's guarantee for repayment. The applicant allegedly issued four cheques in favor of the complainant, of which two were honored and two were dishonored upon presentation. The dishonored cheques are the subject of this FIR. The complainant asserts that the cheques were dishonored due to stop-payment instructions issued by the applicant, and that he was subsequently threatened by the applicant when attempting to claim the repayment.

3. Learned counsel contends that the applicant has been falsely implicated in this case, that there was no dishonest intent in the issuance of the cheques, and that there is no financial relationship between the applicant and the complainant. The learned counsel submits that the dishonoring of the cheques was due to a misunderstanding or clerical error, and that the applicant was not responsible for the dishonor. Furthermore, it is argued that there is no evidence of any fraudulent or dishonest conduct on the part of the applicant. Applicant was having no direct relation with the complainant but in fact he has issued the cheques to one Amjad, who stated that such cheques have been misappropriated

and in this regard he too moved an application to the police authority. The instant cheques have been misused by the complainant. He lastly prayed that the accused may be admitted on bail and he is ready to face the trial. He further argued that applicant had no knowledge of the dishonoring of the cheques and did not intentionally issue them with the intent to defraud the complainant. There is no evidence to substantiate the claim of dishonesty or fraudulent conduct on the part of the applicant. The applicant has been cooperating with the authorities and has not attempted to evade arrest. The case requires further inquiry as to whether a dishonest or fraudulent intent existed in the issuance of the cheques.

4. The learned APG representing the State opposes the bail application, contending that the issuance of the dishonored cheques constitutes a prima facie offence under Section 489-F PPC. The APG argues that the applicant's actions in stopping the payment of the cheques suggest fraudulent intent, as the cheques were issued in furtherance of a financial obligation, and the applicant is responsible for the dishonor of the cheques.

5. The applicant has denied the allegations and asserts that he was not involved in any financial transaction with the complainant. The applicant contends that the cheques were issued under different circumstances to one Muhammad Amjad with whom he was having business relationship, and that the dishonor of the cheques was due to their misplacement and a misunderstanding with Muhammad Amjad. Section 489-F of the PPC deals with the offence of dishonestly issuing a cheque with the intent to deceive or defraud the payee. The essential ingredients of this offence are:

- i. *Issuance of a cheque by the accused.*
- ii. *The cheque being dishonored upon presentation due to insufficient funds or a stop-payment instruction.*
- iii. *The accused acting dishonestly or with fraudulent intent.*
- iv. *A clear financial obligation or liability underlying the issuance of the cheque.*

6. This Court is mindful of the fact that mere dishonor of a cheque, without proof of dishonest intent, does not constitute an offence under Section 489-F PPC. In *Mian Allah Ditta v. The State* (2013 SCMR 51), the Supreme Court held that a cheque issued as security or without an underlying obligation does not attract Section 489-F PPC. Similarly, in *Sharafat Khan v. The State* (PLD 2022 SC 281), the court emphasized the requirement to establish dishonesty or fraudulent intent to constitute the offence under Section 489-F PPC.

7. Upon careful consideration of the submissions and the material on record, I am of the view that the applicant has made out a case for the grant of pre-arrest bail. The prosecution has yet to establish a prima facie case of dishonesty or fraudulent intent on the part of the applicant. While the dishonoring of the cheques is indeed a significant fact, it does not, in and of itself, constitute an offence under Section 489-F PPC unless there is evidence to support the claim of dishonest intent. The applicant has stated that the cheques were misplaced, and the stop-payment instruction was issued as a result of this misunderstanding. There is no clear evidence at this stage to suggest that the applicant issued the cheques with fraudulent intent or for the purpose of deceiving the complainant. Moreover, the applicant has cooperated with the investigation and is not a flight risk. The circumstances of the case, including the absence of strong evidence of dishonest intent, point towards the need for further inquiry into the matter. As such, the applicant is entitled to pre-arrest bail in the interest of justice.

8. In view of the above, the application for pre-arrest bail is allowed and the interim order dated: 26.12.2024 is confirmed under same terms and conditions. Accused to cooperate with investigation and join trial. Needless to mention, the observations made hereinabove are tentative in nature and shall not influence the trial Court at the stage of deciding the case on merits.

JUDGE