IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 1127 of 2025.

Applicant	:	Syed Muhammad Zaki son of Syed Taqi Yahya, Through Mr. Jamshed Qazi, Advocate
Respondent	:	The State Through Ms. Rahat Ahsan, Addl. P.G Sindh duly assisted by Ms. Farhat Qureshi, advocate for the Complainant.
Date of hearing	:	26.05.2025
Date of order	:	30.05.2025

O R D E R

KHALID HUSSAIN SHAHANI, J. – Applicant, Syed Muhammad Zaki seeks post arrest bail in a case bearing crime No. 17/2025 of P.S. Eidgah, offence under Section 489-F of the Pakistan Penal Code. The applicant is aggrieved by the dismissal of his bail applications by the learned Additional Sessions Judge IV South, Karachi, and IX Judicial Magistrate South, Karachi, vide orders dated 30.04.2025 and 21.04.2025, respectively.

2. The prosecution theory reveals that the complainant who is an advocate by profession and a retired employee of the National Bank of Pakistan, had business dealings with applicant who operates a cloth business at Jama Cloth Market. The complainant states he invested an amount of Rs. 7,000,000/- (Seven Million Rupees) in cash in the applicant's cloth business, based on an agreement. After about two years, the complainant sought an accounting of the business and its profits. In settlement of the original invested amount, the applicant issued a cheque bearing No. 83953545 for Rs. 2,500,000/- (Two Million Five Hundred Thousand Rupees), drawn on UBL, Babaye Urdu Road branch, dated 20.02.2024. The complainant presented this cheque for encashment in his account (No. JS-534152, Bank Garden East branch) on 21.02.2024. However, the cheque was **dishonored** due to “dormant account" by the UBL Babaye Urdu Road branch. Following the dishonor, the complainant asserts that he contacted the applicant,, who allegedly resorted to "talmatol" (evasiveness) and failed to return the amount. The complainant maintains that the applicant unlawfully retained the funds. Prior to lodging the FIR, the complainant states he filed an application at the Police Station and pursued a petition (No. 24/2263) under Section 22-A Cr.P.C. through the learned Additional Sessions Judge No. 3 South. Despite an order from

the learned Court and his subsequent efforts, the applicant allegedly continued to evade repayment, prompting the registration of FIR inter alia on above facts.

3. The learned counsel vehemently argued that the applicant has been falsely implicated in the instant case with malafide intentions. He emphasized the inordinate and unexplained delay of eleven months in the registration of the FIR, as the alleged incident of cheque dishonor occurred on 21.02.2024, while the FIR was lodged on 28.01.2025. He contended that such an inordinate delay is fatal to the prosecution's case, particularly in offences where the element of dishonest intent is crucial, and relied upon the principle that "bail is the rule, jail is the exception," especially in cases falling outside the prohibitory clause of Section 497 Cr.P.C., as the offence under Section 489-F PPC is punishable up to three years. Furthermore, the learned counsel highlighted the lack of specific details or documentary proof regarding the alleged amount of Rs.7,000,000/- given in cash to the applicant by the complainant. He asserted that the complainant has not provided any receipts or details to substantiate this claim. A significant point raised by the learned counsel was the alleged misuse of the cheque. He argued that the cheque in question was an "open cheque" issued to a third party, not directly to the complainant, and that it has been misused by the complainant. He also alleged that the complainant and his son have lodged more than 70 FIRs against the applicant, indicating a pattern of harassment and an attempt to blackmail. He further contended that the alleged "Iqrarnamas" (agreements) produced by the complainant are fake documents, lacking the complainant's signature, and thus cannot be relied upon as evidence. The learned counsel submitted that the dispute is essentially civil in nature, concerning a business transaction, and that the proper remedy for the complainant would have been to file a summary suit under Order XXXVII of the C.P.C., which he deliberately avoided, thereby demonstrating his malafide intent to use criminal proceedings for debt recovery. Moreover, the learned counsel brought to the Court's attention that the complainant, being an advocate and a retired National Bank of Pakistan employee, is allegedly involved in illegal activities, including the business of charging interest (sood) on loans, which is prohibited by law and Islamic injunctions. In this regard, he cited the judgment in *IInd Appeal No. 203/2019 dated 25.08.2023*, highlighting the enforcement of the Private Loan Act, 2023, against usury. He also mentioned that the complainant is facing a money laundering case (Session Case No. 28/2023, FIR No. 15/23, U/s 4/5/23, P.S. FIA State Bank Circle), and that

the applicant is a witness in that case. He further pointed out that multiple Cr. Misc. Applications filed by the complainant were dismissed by the District and Session Judge, Sujawal. The learned counsel relied upon the following case laws:

a) 2024 YLR 1144: This citation likely pertains to the principle that an inordinate and unexplained delay in lodging the FIR is fatal for the prosecution, and that in cases under Section 489-F PPC, which does not fall within the prohibitory clause of Section 497 Cr.P.C., bail is the rule.

b) 2007 P.Cr.L.J 1512: This judgment could support the argument that when a civil dispute is given a criminal color, bail should ordinarily be granted.

c) 2024 SCMR 1596: This likely supports the contention that if the complainant fails to provide specific details of the alleged transaction or whether the cheque was issued in fulfillment of a legally enforceable obligation, it leads to a case of further inquiry.

d) 2022 SCMR 1467: This citation probably deals with situations where a blank or open cheque was misused against the drawer, or where the complainant lacked proper receipts or proof of the underlying transaction.

e) 2023 SCMR 2122: This judgment likely reinforces that civil proceedings are the proper remedy for debt recovery and that all material being documentary means no further investigation is required, thus favoring bail.

4. He concluded by stating that the challan has been submitted, no further investigation is required, and the applicant is not a desperate or hardened criminal. The applicant has also been deprived of celebrating Eid with his family due to the complainant's alleged malafide actions.

5. The learned counsel for the complainant vehemently opposed the bail application. She emphasized that a cheque is a negotiable instrument, a written order to a bank to pay a stated sum of money from the drawer's account. According to the Negotiable Instruments Act, 1881, a cheque, once issued, implies an undertaking by the drawer to honor the payment. Its dishonor, especially due to a "stoppage of account" (which he implied was purposefully created by the accused by issuing a cheque from a dormant account, though the cheque details indicate "due to stoppage of account from UBL Babaye Urdu branch"), is a serious matter. She argued that the accused purposefully issued the cheque from a dormant account, indicating a clear dishonest intention. He presented a crucial point that the accused himself had sworn two Iqrarnamas (agreements), wherein he unequivocally assured his liability for the outstanding amount. On the basis of these solemn undertakings, the cheque in question was issued for

the repayment of the said outstanding amount. This, according to the complainant's counsel, conclusively establishes the underlying liability and the nexus between the debt and the cheque. She produced photocopies of these Iqrarnamas/Agreements, purportedly for investment in the cloth business, and a copy of the applicant's "Golden Handshake" from the National Bank of Pakistan, to lend credence to the investment claim. Furthermore, the learned counsel for the complainant highlighted that the applicant is accused in multiple other FIRs under Section 489-F PPC including FIR No. 91/2025, P.S. Eidgah, FIR No. 184/2025, P.S. Gulberg, FIR No. 144/2023, P.S. Mithadar, and FIR No. 895/2022, P.S. Sharah-e-Faisal. She argued that these multiple similar cases indicate a consistent pattern of issuing cheques with dishonest intent, thereby demonstrating that the applicant is a habitual offender.

6. The learned APG for the State also objected to the grant of bail, supporting the complainant's stance. She relied upon the case law cited at 2009 SCMR 174. This citation likely emphasizes that bail should not be granted if there are reasonable grounds to believe that the accused has committed a non-bailable offence, particularly where dishonest intention can be prima facie established, or where there is a pattern of similar offences.

7. While the applicant's counsel has raised several points, a closer examination reveals strong rebuttals that weigh against the grant of bail, particularly with the objective of dismissing the application. The delay of 11-month delay is substantial, the complainant has offered an explanation in the FIR itself: "I have given application in Police Station and through Petition No. 24/2263, under section 22-A Cr.P.C, through ADJ No.3 south, after Hon'ble Court's Order, I tried my best but Muhammad Zaki did not return my amount, and giving talmtol (evasiveness), giving statement for and take action." This implies that efforts were being made to recover the amount through legal channels and persuasion *before* resorting to the FIR. Such persistent efforts and the applicant's alleged "talmatol" (evasiveness) could be considered a plausible explanation for the delay, negating the "inordinate and unexplained" aspect relied upon by the defense. The delay, in this context, might not be fatal as the complainant was actively pursuing remedies.

8. The contention regarding lack of details of Rs. 70 Lacs cash, for which the complainant has provided photocopies of "Iqrarnamas/ Agreements for investment on the business of clothes." While the direct

cash receipts for Rs. 7,000,000/- might not be on record at this stage, the existence of these agreements, which the complainant claims formed the basis of the investment, provides a prima facie link to the alleged transaction. Such Iqrarnama is not refuted by the learned advocate for applicant. The authenticity of these Iqrarnamas, although disputed by the defense (claiming lack of complainant's signature), is a matter of evidence and in cases of Iqrarnama when a person itself agrees to something, there is no need to sign by other party, but its further authenticity would be determined during the trial and cannot be conclusively decided at the bail stage. The Iqrarnamas *could* imply a liability leading to the issuance of the cheque.

9. The applicant's claim that the cheque was an "open cheque" issued to a "third party" and then misused by the complainant is a defense requiring proof. The fact that the cheque ultimately came into the possession of the complainant, and was presented by him, places a burden on the applicant to explain how this occurred and why it constitutes misuse. Moreover, if the Iqrarnamas are considered prima facie valid, they would establish a direct liability to the complainant, irrespective of whether the cheque was initially "open" or intended for a third party and no agreement or receipt of such third party is provided by the applicant.

10. The argument that the complainant and his son have lodged numerous FIRs against the applicant or others (40-45 FIRs mentioned) is a serious allegation but requires substantiation. While such a pattern, if proven, could suggest malafide, at the bail stage, it doesn't automatically negate the specific allegations in the present FIR. The learned DPG's reliance on 2009 SCMR 174 could signify that a history of similar offences by the applicant himself might be a factor against bail.

11. The applicant's contention that the Iqrarnamas are "fake documents" due to the lack of complainant's signature is a factual dispute. The complainant has presented them, and the accused's denial is an assertion. The evidentiary value and authenticity of these documents can only be determined after recording evidence during trial. At the bail stage, their existence and the complainant's claim of their veracity create a prima facie case against the applicant, particularly since the complainant states the accused "sworn two Iqrarnamas wherein he assured his liability and on the basis of such Iqrarnama he issued the cheque."

12. While the underlying transaction might be civil, the issuance of a cheque against an admitted liability, followed by its dishonor due to the

drawer's fault (e.g., dormant account as alleged by complainant), can still give rise to a criminal offense under Section 489-F PPC. The Supreme Court held that civil remedy is not a bar to criminal prosecution under 489-F. The complainant's assertion that the applicant issued the cheque from a dormant account, if proven, would indicate a clear dishonest intent at the time of issuance, transcending a mere civil liability. While grave allegations have been made against the complainant regarding his profession and alleged involvement in illegal money lending and an FIA case, these are separate matters. While they might affect the complainant's credibility at trial, they do not, at the bail stage, automatically absolve the applicant of the specific charge under Section 489-F PPC in the present case, especially if a prima facie case of dishonest issuance of cheque against liability is established. The focus remains on whether there are reasonable grounds to believe the applicant committed the offence in FIR No. 17/2025. The complainant's specific argument that the cheque was purposefully issued from a "dormant account" is highly significant. If this is proven, it directly establishes the "dishonest intention" which is the sine qua non for an offence under Section 489-F PPC. It demonstrates that the drawer knew the cheque would not be honored, making it a deliberate act of deceit. This is a strong point against the applicant's claim of innocence or civil dispute.

13. The fact that the applicant is involved in several other FIRs under Section 489-F PPC (FIR Nos. 91/2025, 184/2025, 144/2023, 895/2022) is a crucial factor. This indicates a potential pattern of conduct and demonstrates that the applicant is not a first-time offender. It goes to show that his claim of being "absolutely innocent" may be belied by his consistent involvement in similar cases. The superior courts often take a stern view of individuals habitually involved in such offences, as it directly impacts public trust in negotiable instruments. The complainant's emphasis on the "negotiable instrument" theory is valid. A cheque is a solemn promise of payment. The very purpose of Section 489-F PPC is to punish those who undermine the sanctity of this instrument by issuing it dishonestly. The arguments regarding the cheque being for an outstanding amount based on Iqrarnamas and the alleged dormant account squarely fall within the ambit of dishonest issuance. Considering the complainant's contentions regarding the Iqrarnamas, the issuance of the cheque for an outstanding amount, and the allegation of a dormant account, there appear to be reasonable grounds to believe that there appear sufficient evidence to link the applicant with commission of the alleged offence. The defense arguments, while plausible, mainly create a

situation of "further inquiry," which is often a ground for bail. However, in cases of Section 489-F, where the evidence at the bail stage prima facie suggests dishonest intent, and considering the applicant's history, the principle of "further inquiry" may not be sufficient for bail.

14. Indeed, section 489-F PPC does not fall within the prohibitory clause of Section 497(1) Cr.P.C., thereby making bail the general rule, this rule is not absolute. Bail can still be refused if there are reasonable grounds to believe that the accused has committed a non-bailable offence, particularly if there is evidence of dishonesty, habitual offending, or if the court perceives a calculated attempt to defraud. The multiple FIRs and the allegation of issuing a cheque from a dormant account directly address this exception.

15. Having heard the learned counsel for the applicant, the learned counsel for the complainant, and the learned DPG for the State, and having perused the available record, this Court is of the considered view that while the applicant's counsel has raised several arguments, particularly concerning the delay in the FIR and the civil nature of the dispute, these arguments are rebutted by strong counter-arguments and prima facie evidence presented by the complainant. The complainant's assertion that the cheque was issued against an acknowledged liability, as evidenced by the Iqrarnamas, and the specific allegation that the cheque was issued from a dormant account are crucial. If proven, the issuance of a cheque from a dormant account unequivocally demonstrates a dishonest intention at the time of issuance, which is the cornerstone of an offense under Section 489-F PPC. The delay in lodging the FIR, while present, is sought to be explained by the complainant's prior efforts to recover the amount, which needs to be examined during trial. Furthermore, the fact that the applicant is admittedly involved in multiple other FIRs under Section 489-F PPC signifies a pattern of similar conduct, which goes against his claim of being an innocent person and strengthens the prosecution's contention of his dishonest intent. This history indicates that the applicant may be a habitual offender in matters of cheque dishonor. The arguments regarding the authenticity of the Iqrarnamas, the alleged misuse of an open cheque issued to a third party, and the complainant's character or involvement in other cases are matters of evidence that require deeper scrutiny during the trial. At this stage, there are sufficient reasonable grounds to believe that the applicant has committed a non-bailable offence. The consistent pattern of cheque dishonor cases against the applicant, coupled with the complainant's

assertions regarding the underlying agreements and the nature of the account, negates the general rule of bail in non-prohibitory clause offences.

16. The yardstick of above discussion indicates that prima facie evidence indicating dishonest intent, and the applicant's history of involvement in similar cases under Section 489-F PPC, this Court is not inclined to grant bail to the applicant at this juncture. The bail application is accordingly dismissed. Needless to say that the above assessments are tentative in nature and shall not effect the merits of trial.

J U D G E