

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 580/2025.

Applicant : Abdul Kabeer Malik son of Malik M. Ashraf,
Through Mr. Subhan Javed, advocate

Respondent : The State
Through Ms. Rahat Ehsan, Addl. P.G Sindh
Duly assisted by Syed Shabbir Shah, advocate
for Complainant

Date of hearing : 23.04.2025

Date of order : 30.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Abdul Kabeer Malik seeks pre-arrest bail in a case bearing crime No. 56/2025, offences punishable under Sections 406, 466, 468, and 506 PPC of Police Station City Court, Karachi.

2. The facts in brief, as alleged by the complainant, are that the complainant was married to the present applicant in the year 2020; however, due to matrimonial disputes, she sought dissolution of marriage through *Khula*. On 07th October 2024, the complainant allegedly received a telephonic call from an officer of HBL City Court Branch informing her that two cheques bearing Nos. 10422265 and 10422266, each amounting to Rs. 10,00,000/-, had been deposited by the applicant for encashment. It is alleged that the applicant attempted to forge her signatures on the said cheques, but the same could not be encashed due to a mismatch of signatures. The complainant further alleged that she apprehends danger to her life and property at the hands of the applicant. Consequently, the FIR was lodged after a delay of more than four months from the date of the alleged incident.

3. Learned counsel for the applicant has argued the matter at considerable length. He submitted that the FIR has been lodged with an unexplained delay of several months, which casts serious doubt upon the veracity of the complainant's version. It was further argued that the complainant had earlier filed a petition under Section 22-A Cr.P.C. bearing No. 5565/2024, seeking directions for registration of FIR, but the same was dismissed by the learned Sessions Judge. Thereafter, a similar plea was raised before the High Court, which also met the same fate. Learned counsel pointed out material contradictions between the complainant's

earlier version and the present FIR, particularly regarding the identity of the concerned bank, previously stated to be Bank Al-Habib Garden Branch, whereas in the FIR it is now stated to be Habib Bank Limited (HBL) City Court Branch. Learned counsel also submitted that the applicant has initiated several independent proceedings against the complainant, including Guardian and Ward Application No. 2060/2024 for custody of minor, Summary Suit No. 143/2024, and Defamation Suit No. 14/2024, showing that there is an ongoing matrimonial and civil dispute between the parties. He contended that due to multiple versions and disputes between the parties, the matter calls for further inquiry into the truthfulness of the allegations. He lastly prays for confirmation of bail.

4. Conversely, learned DPG For the State duly assisted by counsel for the complainant vehemently opposed the confirmation of bail, contending that the applicant being a court employee has misused his position. It was argued that the FIR filed by the applicant was earlier recommended and approved under "C" Class, and that he has taken contradictory stands in different proceedings, which disentitle him to the concession of bail.

5. Before proceeding further, it would be appropriate to examine the provisions of law invoked in the instant FIR:

- **Section 466 PPC** reads as under:
"**Forgery of record of Court or of public register, etc.** — Whoever forges a document purporting to be a record or proceeding of a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant in his official capacity, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

6. From bare reading of Section 466 PPC, it is evident that the offence of forgery under this section pertains exclusively to public records, judicial proceedings, certificates issued by public servants, and the like. A private cheque drawn on a bank account does not fall within the purview of this provision. Thus, application of Section 466 PPC in the present facts appears to be legally misconceived and prima facie erroneous.

- **Section 406 PPC** pertains to criminal breach of trust and provides:
"**Punishment for criminal breach of trust** — Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

7. Insofar as Section 406 PPC is concerned, the essential ingredients for attracting this provision include (i) entrustment of property, and (ii) dishonest misappropriation or conversion of the property so entrusted. Whether the said cheques were entrusted to the applicant, or whether they were otherwise obtained or misused by the applicant, are factual controversies requiring deeper appreciation of evidence, which is not permissible at the bail stage and would be determined during trial after recording of evidence.

8. The nature of the alleged offences further shows that the same do not fall within the prohibitory clause of Section 497(1) Cr.P.C. In this context, the principle laid down by the Hon'ble Supreme Court in the case reported as 2017 SCMR 733 is relevant, wherein it has been observed that in cases not falling under prohibitory clause of Section 497(1) Cr.P.C., the grant of bail shall be a rule and its refusal an exception, depending upon the facts and circumstances of each case. There exists a family/civil nature disputes between the parties, as admitted by both the parties regarding pendency of Guardian & Ward Application, Summary Suit and Defamation suit, the false implication and exaggeration of the facts cannot be ruled out.

9. Thus, in cases involving offences punishable with imprisonment of less than ten years and not falling within prohibitory clause, bail is to be granted as a matter of right unless extraordinary circumstances are shown to exist, which do not appear to be present here.

10. Furthermore, the delay in lodging of the FIR, discrepancies in the versions narrated by the complainant at different forums, earlier dismissal of her petitions under Section 22-A Cr.P.C., and pending civil litigations between the parties, all cumulatively indicate that the matter is not free from doubt and requires thorough inquiry at trial. Given the above circumstances, I am of the tentative view that the applicant has succeeded in making out a case for bail. Accordingly, the interim pre-arrest bail already granted to the applicant vide order dated 05.03.2025 is hereby confirmed on the same terms and conditions. Needless to mention, the observations made hereinabove are purely tentative in nature and shall not prejudice the trial Court while deciding the case on merits.

J U D G E