IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 748/2025.

Applicant	:	Kashif Naveed son of Chaudhary M. Rafique Through Mr. Hussain Bux, Advocate
Respondent	:	The State through Mr. Qamaruddin Nohri, DPG Sindh duly assisted by Mr. Ghulam Rasool Shaikh, advocate for complainant.
Date of hearing	:	25.04.2025
Date of order	:	05.05.2025

O R D E R

KHALID HUSSAIN SHAHANI, J. – The applicant, Kashif Naveed seeks post-arrest bail in a case bearing crime No. 591/2023, for offence under Section 489-F PPC of P.S. Malir Cantt, Karachi. Earlier the bail plea of accused was declined firstly by the learned Judicial Magistrate-VI Malir Karachi vide order dated: 07-03-2025 and onward by the learned Additional Sessions Judge-I Malir Karachi vide order dated: 18.03.2025.

2. Succinctly stated, the prosecution case is that the complainant Hilal Khan, allegedly paid a sum of Rs. 70,00,000/- to the applicant for entering into a purported business partnership. The grievance raised in the FIR is that neither profit nor capital was returned, and upon persistent demands, the applicant issued a cheque of Rs. 20,00,000/- which was subsequently dishonoured on presentation due to insufficient funds.

3. Learned counsel for the applicant contends that the FIR is lodged with unexplained delay of 115 days without plausible justification. It is argued that neither the existence of a loan nor any legal obligation is substantiated through the tangible piece of evidence. The alleged cheque was issued on the basis of security against the partnership. He argued that there is no mode of transaction by the complainant as to how he paid the amount to the applicant. It is submitted that the cheque was issued not in discharge of a proven liability but allegedly in the context of a disputed business transaction, for which even the basic terms such as investment date, profit-sharing ratio, or business license have not been detailed. He placed reliance on the judgments reported as *Mian Allah Ditta v. The State* (2023 SCMR 51), *PLD 2012 Sindh 464 (Malik Safdar Ali v. Syed Khalid Ali)*, and *2023 SCMR 2122 (Noman Khaliq v. The State)*, to argue that

where no liability or obligation is demonstrated, offence under Section 489-F PPC is not attracted. It is further contended that the matter at best is of civil nature and calls for further inquiry.

4. Learned Deputy Prosecutor General duly assisted by the learned advocate for complainant vehemently opposes the bail application, submitting that the dishonoured cheque was issued by the applicant and the same fulfills the ingredients of Section 489-F PPC. He argued that accused entered into partnership agreements with applicant and the bank transaction record is available to show the amount was being transferred to the applicant and the ledger shows that the complainant paid the amount on different occasions and received a handsome amount and on repayment the said cheque was issued, which was dishonoured. He further argued that mere absence of agreement regarding receiving of cheques does not invalidate the claim once the cheque is dishonoured. He, however, did not dispute that the FIR is delayed and that no documentary evidence of the alleged investment has so far been produced during investigation. He argued that the accused remained absconder and after registration of FIR, when his CNIC was blocked, consequently he was joined with the investigation. He further argued that the applicant committed the financial murder of not only the applicant but his whole family. Learned advocate for complainant relied upon the case laws cited at 2021 SCMR 1466, 2021 P.Cr.L.J 886, 2014 MLD 433, 2018 MLD 273, 2018 YLR 338.

5. The core allegations rest upon an alleged investment of Rs. 70,00,000/-, yet no agreement of Rs.70,00,000/- (Seventy Lac) in shape of investment or its acknowledgment is produced, however, learned advocate for the complainant produced the agreement whereby Rs.30,00,000/- (Rupees Thirty Lac) as 30% of the partnership was received and there is no clause regarding remaining balance of 70% as its mode of payments, second agreement shows that the complainant paid the bank guarantee from AR Logistic Company by the complainant at the rate of Rs.30,00,000/- (Thirty Lac), third agreement shows that the applicant received Rs.10,00,000/- for the purpose of investment from the complainant. However, all these agreements were refuted by the learned advocate for the applicant on the single score that in none of the agreement the mode of payment is not mentioned, however, the cheque in question was given on the basis of security of such partnership which was misused by the complainant party. The cheque in question, while admittedly dishonoured, appears to have been issued in the backdrop of a

civil dispute pertaining to a failed business understanding. The absence of supporting documentation and the delayed lodging of the FIR considerably dilute the prosecution's case at this stage.

6. It is a settled principle of law that to attract the mischief of Section 489-F PPC, it must be shown that the cheque was issued *dishonestly* towards repayment of a legally enforceable debt or obligation. Mere issuance and dishonour are not sufficient in the absence of proof of underlying liability. However, in the same vein, it is conceded by both sides that the offence under Section 489-F of the PPC does not fall within the prohibitory clause of Section 497(1), Cr.P.C., and attempted to urge that the case of the applicant is distinguishable and falls within the exception to the general rule of bail. Prima facie, this argument appears to be inconsistent with the binding pronouncements of the Honourable Supreme Court of Pakistan, including the recent unreported judgment in *Muhammad Anwar v. The State* (Crl. Petition No. 442-L/2024), decided on 03.06.2024, wherein the Court observed as under:

> *"8. This Court has held in the case titled Mian Allah Ditta that every transaction involving dishonour of a cheque does not per se constitute an offence. The essential ingredients required to attract Section 489-F PPC include: (i) issuance of a cheque; (ii) such issuance being with dishonest intent; (iii) the cheque must have been issued in discharge of a loan or fulfillment of an obligation; and (iv) the cheque is dishonoured.*
> *Furthermore, in Abdul Rasheed v. The State [2023 SCMR 1948], it was observed:*
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> *'Even otherwise, even if the complainant seeks recovery of money, Section 489-F PPC is not designed by the Legislature as a recovery mechanism. The question as to whether a cheque was issued in discharge of a loan or obligation is to be determined by the trial court upon recording of evidence. The maximum punishment under Section 489-F PPC is three years, which does not bring the case within the prohibitory clause of Section 497 Cr.P.C. It is settled law that in offences not falling within the prohibitory clause, grant of bail is a rule and refusal an exception.'"*

7. The Court further reaffirmed the constitutional significance of personal liberty under Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973, and restated the principle that it is preferable to err on the side of granting bail than to mistakenly deny it, relying upon the dictum laid down in *Chairman NAB v. Malik Munir Ahmad Khan*, wherein it was held:

> *"To err in granting bail is better than to err in declining it; for ultimate conviction can rectify a mistaken grant of bail, whereas an unjustified denial results in irreparable incarceration of an innocent person."*

8. In the present case, the allegation against the applicant, as per the FIR lodged by the complainant Muhammad Salman Raza, is that the applicant issued a cheque of Rs.20,000,000/- in the context of a marketing business transaction, which was dishonoured due to insufficient funds. It is now judicially settled that mere dishonour of a cheque does not ipso facto attract criminal liability under Section 489-F PPC unless dishonest intention at the time of issuance is proved. As observed by the Honourable Supreme Court in *PLD 2012 Sindh 464* and reaffirmed in *2022 SCMR 592* and *2023 SCMR 2122*, the issuance of a cheque as security, in the absence of a subsisting obligation or proved dishonesty, may not constitute a punishable offence under Section 489-F PPC. The present record indicates that the applicant asserts the cheque was issued as a security in a business transaction. The complainant's allegations, conversely, relate to a broader contractual dispute. At this stage, without the benefit of trial evidence, the competing claims raise factual controversies which cannot be resolved conclusively in bail proceedings. It is equally significant that Section 489-F PPC carries a maximum punishment of three years, and no exceptional circumstances have been demonstrated to justify the denial of bail.

9. The alleged loss to the complainant, while potentially substantial in financial terms, does not elevate the offence into one falling within the prohibitory clause. The Supreme Court has held that quantum of amount does not determine the severity of the offence under this provision, nor does it constitute a basis for pre-trial incarceration (*Muhammad Sarfraz v. The State*, 2014 SCMR 1032; *Saeed Ahmed v. The State*, 1995 SCMR 170). Accordingly, keeping in view the settled principles of law, nature of the offence, and the principle that bail is to be granted as a rule in offences not falling within the prohibitory clause, the applicant has made out a case for grant of bail. The case law relied upon by the learned counsel for the complainant lays down valuable principles; however, with utmost respect, the same is distinguishable in view of the peculiar facts and circumstances of the present case.

10. Given the above, the applicant has succeeded to make out case for further enquiry as envisaged u/s 497(2) Cr.P.C. Accordingly, the applicant is admitted to bail, subject to furnishing solvent surety in sum of Rs.10,00,000/- (Rupes One Million) along with P.R Bond of like amount to the satisfaction of learned trial court.

J U D G E