IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.2990/2024

Applicant	:	Syed Hussain Raza s/o Syed Mehfooz ur Rehman through Mr. Nusrat Umer & Tariq Nadeem Meo, Advocates
Respondent	:	The State through Ms. Rahat Ehsan, Addl. P.G Sindh.
Date of hearing	:	30.04.2025
Date of order	:	06.05.2025

O R D E R

KHALID HUSSAIN SHAHANI, J. – Applicant Syed Hussain Raza seeks pre-arrest bail in a case bearing crime No. 808/2024 registered at Police Station Aziz Bhatti, Karachi, for offence under Section 489-F PPC. The earlier bail plea of the applicant was declined by the Court of learned XIVth Additional Sessions Judge, Karachi-East, vide order dated 19.12.2024.

2. The allegation, in brief, as set out in the FIR, is that the complainant Muhammad Qasim Hashimi purportedly handed over a sum of Rs.66,50,000/- to the applicant between the years 2021 and 2023 for business purposes. When repayment was demanded, the applicant allegedly issued cheque No.11290785 amounting to Rs.66,50,000/- dated 25.11.2024 drawn on Bank Al Habib, which upon presentation was dishonoured. The FIR was lodged on 07.12.2024.

3. Learned counsel contended that the applicant is a respectable citizen, having no previous criminal record, and has been falsely implicated in the present case on account of mala fide and ulterior motives. It was argued that the FIR is an abuse of process of law and has been lodged only to pressurize the applicant and his family in view of a pending petition for protection filed by the applicant's brother against the complainant before this Court. The FIR was lodged after unexplained and inordinate delay of eight days, although the date of dishonour of cheque is 29.11.2024 and the FIR was filed on 07.12.2024, which suggests deliberation and afterthought. Learned counsel submitted that the entire transaction was of a civil and business nature, governed by mutual understanding and informal agreements over a span of two years (2021 to 2023), during which multiple payments were made by the applicant to the

complainant through online banking channels. It was contended that the complainant's brother Adeel, who was previously employed in the company run by the applicant's brother, stole certain blank cheques from the office, and the impugned cheque was one of those stolen instruments. To support this, learned counsel referred to the bank's memo indicating mismatch of signature on the cheque. He argued that the applicant never voluntarily issued the said cheque and did not owe any enforceable liability to the complainant. He further argued that the complainant has not instituted any civil suit for recovery of the amount allegedly due, nor taken recourse to any lawful remedy under Order XXXVII CPC, which suggests that the instant criminal proceedings are not intended for justice but rather for arm-twisting and coercive recovery. Relying on the judgments reported as *2013 SCMR 51 (Mian Allah Ditta v. The State)*, *2022 SCMR 592 (Abdul Saboor v. The State)*, *2023 SCMR 2122 (Noman Khaliq v. The State)* and *PLD 2012 Sindh 464*, learned counsel contended that where the cheque is alleged to have been issued in the context of a business dispute or was given as security, and where mens rea or dishonest intent is lacking, the ingredients of Section 489-F PPC are not made out and bail ought to be granted. He also relied upon *PLD 1995 SC 34 (Tariq Bashir v. The State)* to urge that in non-prohibitory offences, bail is the rule and refusal an exception, and that further inquiry under Section 497(2) Cr.P.C. applies due to the serious factual dispute regarding issuance, signature, and liability. He also emphasized that the applicant is ready to face trial and undertakes to fully cooperate with the investigation.

4. Learned DPG opposed the confirmation of interim bail and argued that a cognizable offence under Section 489-F PPC has clearly been made out from the plain reading of the FIR. He submitted that the dishonoured cheque, admittedly issued in the name of the complainant, constitutes prima facie evidence of an offence under Section 489-F PPC, which criminalizes the act of issuing a cheque dishonestly for repayment of a loan or obligation. The learned DPG contended that although the alleged transaction may have commercial aspects, the penal consequences of issuing a cheque without sufficient funds or with dishonest intent fall within the scope of the statute. He submitted that the dispute about whether the cheque was stolen or misused is a defence which requires evidence and cannot be resolved at the bail stage. He further argued that the applicant failed to take any prior action, such as lodging a complaint or stop-payment request, if the cheque had been stolen, which creates a presumption against him. He conceded that the offence is non-prohibitory but maintained that bail may be refused where

there is a likelihood of tampering with evidence or absconding. However, he left the matter to the discretion of the court while submitting that no exceptional circumstances have been demonstrated for pre-arrest bail.

5. Learned counsel for the complainant vehemently opposed the bail plea and contended that the applicant had received a substantial sum of Rs.66,50,000/- over a two-year period on the assurance of returning the principal amount along with profit, but dishonestly failed to fulfill his promise. He submitted that the issuance of the dishonoured cheque bearing the specific date and amount is a clear indicator that the accused had recognized his liability and attempted to settle it, but the cheque was dishonoured on presentation, evidencing criminal intent. He argued that the defence of cheque theft is a concocted story, introduced only after the registration of FIR. If the cheque was stolen, the applicant should have reported the matter to the bank or relevant police station earlier, but no such complaint was ever made. This inaction, he argued, confirms the issuance was deliberate and not unauthorized. He further contended that business transactions, even if civil in nature, do not automatically exclude criminal liability when a cheque is issued with dishonest intent and later dishonoured. The law, provides safeguards against economic fraud and cannot be diluted merely on the assertion of a civil transaction. He urged the court not to grant bail as the applicant has failed to justify any mala fide on the part of the complainant, and instead appears to be evading liability under the cloak of civil remedy. He concluded that the applicant does not deserve the concession of pre-arrest bail and should be directed to surrender before the trial court and face the consequences of his wrongful acts.

6. From a perusal of the FIR, it appears that complainant shown a financial transactions spanning over two years on the basis of investment and profits purpose and produced some agreement, but all these agreements are seeming to be stereo-type and liable to be adjudged at the time of trial. It is further the case of the applicant that certain transaction was existing with brother of complainant and the cheque in question was stolen by his brother, in this regard the applicant instituted a Civil Suit No. 365/2024 which was also pending before the Court of VIIth Senior Civil Judge East Karachi against complainant for declaration, cancellation of forged agreement, return and cancellation of stolen cheques and permanent injunction.

7. There is admitted delay of eight days in lodging the FIR without plausible explanation. While delay alone is not fatal, in the context of commercial dealings it raises doubt as to the bona fides of the complainant, especially when the cheque in question and agreements being claimed by the applicant to have been stolen by an employee and misused, and the signatures thereon allegedly do not match with their names. The applicant has placed reliance on his banking transactions during 2021 to 2023, asserting that he has already repaid the claimed amount. This assertion, if substantiated, would attract further inquiry under Section 497(2) Cr.P.C. Whether the cheque was issued in discharge of an existing liability or was misused is a matter requiring evidence at trial and cannot be determined conclusively at the bail stage.

8. No incriminating evidence has been brought on record to suggest that the applicant is a habitual offender or that he is likely to abscond or tamper with the prosecution evidence. He has no previous criminal record and appears to have deep roots in the community. The offence under Section 489-F PPC is a non-cognizable and non-prohibitory offence, punishable with imprisonment which may extend to three years. As held in Tariq Bashir v. The State (PLD 1995 SC 34), the principle that bail is the rule and refusal an exception squarely applies in such cases. In Abdul Saboor v. The State (2022 SCMR 592) and Noman Khaliq v. The State (2023 SCMR 2122), the Hon'ble Supreme Court has reiterated that Section 489-F PPC is not meant for monetary recovery and that where mala fide or further inquiry is involved, bail ought to be granted.

9. At this stage, the applicability of Section 489-F PPC itself is subject to serious factual scrutiny, particularly in light of the alleged theft and misuse of cheque, civil nature of the transaction, and prior payments. Therefore, the case of the applicant is covered under the ambit of "further inquiry" as defined in Section 497(2) CrPC. Accordingly, the interim bail earlier granted to the applicant is hereby confirmed on the same terms and conditions. The applicant is directed to cooperate with the Investigating Officer and shall not misuse the concession of bail. The applicant shall appear before the trial court on each and every date of hearing, unless exempted under the law. The observations made herein are tentative in nature and shall not prejudice the trial court in deciding the matter on merits.

J U D G E