

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.791 of 2025

Applicant : Muhammad Naeem son of Muhammad Yaseen,
through Mr. Muhammad Ghalib, advocate

Respondent : The State
Through Mr. Qamaruddin Nohri, DPG duly
assisted by Mr. Kashif Ali, advocate for
complainant.

Date of hearing : 05.05.2025

Date of order : 09.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Muhammad Naeem seeks post-arrest bail in a case bearing Crime No. 864 of 2024, offence under Section 489-F PPC of P.S. Steel Town, Karachi. His earlier application was declined by the learned Sessions Judge, Malir Karachi vide order dated 11.03.2025.

2. As per prosecution theory, the complainant runs a dairy business, the applicant Muhammad Naeem, one Muhammad Farooq, (a former employee) and his son misappropriating business funds, executed an agreement involving the applicant Muhammad Naeem (son-in-law/nephew of Farooq) whereby a cheque bearing No. 287655225 dated 14.11.2024 of Rs.2,000,000/- was allegedly issued by the applicant. Upon its dishonour due to insufficient funds, the case was registered *inter alia* on the above facts.

3. Learned counsel contended that, the cheque in question was a security cheque, issued as part of a settlement agreement ("Iqrarnama") dated 01.11.2024 between the complainant and Muhammad Farooq; the complainant has already received Rs.4,000,000/- from the parties, and the security cheque was never meant for immediate encashment; No specific role of inducement or deception is attributed to the applicant, and he has not repeated any such conduct or tampered with evidence while on bail; The case is covered under Section 497(2) Cr.P.C., as it requires further inquiry; The offence under Section 489-F PPC does not fall within the prohibitory clause of Section 497(1) Cr.P.C.

4. Conversely, the learned DPG assisted by the learned advocate for complainant opposed the bail plea, arguing that the cheque was dishonoured, which prima facie attracts Section 489-F PPC, and the subsequent threats also show mala fide on part of the applicant.

5. Before discussing the facts, it is instructive to refer to the ingredients that justify cancellation of bail under Section 497(5) Cr.P.C. These include:

- *Misuse of concession of bail by the accused;*
- *Interference or tampering with the prosecution evidence or influencing witnesses;*
- *Likelihood of absconsion;*
- *Commission of a similar or identical offence while on bail;*
- *Violation of bail conditions;*
- *Emergence of new incriminating material after grant of bail.*

6. In the present case, there is no material on record to suggest that the applicant has either tampered with prosecution evidence, absconded, or misused the concession of bail. The FIR makes no specific attribution of deceitful conduct to the applicant at the time of issuance of the cheque. Rather, the Iqarnama, a copy of which is available on record, suggests that the complainant had entered into a settlement and accepted certain amounts from Muhammad Farooq and his relatives, with the impugned cheque allegedly being one of two security cheques issued to secure remaining dues, if any.

7. The Honorable Apex Courts in various pronouncements have been pleased to held that the object of the provision (Section 489-F PPC) is to criminalize dishonest issuance of cheque to cause wrongful loss, but where the cheque is issued as a security or in absence of a proven obligation, the case becomes one of further inquiry under Section 497(2) Cr.P.C. Offence is not of heinous nature and does not fall within the prohibitory clause. Bail is rule, and its refusal an exception.

8. Likewise, the Hon'ble Supreme Court in 2022 SCMR 592 (Abdul Saboor v. The State) and 2023 SCMR 2122 (Noman Khaliq v. The State) reaffirmed that:

- The offence under Section 489-F PPC is not prohibitory;
- The accused is entitled to bail if the existence of the liability or dishonest intention is disputed and needs determination through evidence;
- Criminal process is not to be used for monetary recovery where civil remedies are equally available.

9. Here, it is also material to observe that the cheque's date of issuance, exact purpose, and existence of legally enforceable debt are all disputed and intertwined with factual controversies which require recording of evidence. The complainant had prior litigation/FIR against Muhammad Farooq, and the involvement of the applicant appears incidental. It is also significant that there was an unexplained delay of 11 days in registration of FIR after dishonour, which prima facie affects the credibility of the prosecution version.

10. For all the reasons stated above, the case against the applicant calls for further inquiry under Section 497(2) Cr.P.C. The impugned order dated 11.03.2025 passed by the learned Sessions Judge in Bail Cancellation Application No.03/2025 does not reflect proper appreciation of the above settled principles and fails to establish any of the requirements under Section 497(5) Cr.P.C. to justify cancellation of bail.

11. Given the above, the applicant Muhammad Naeem has succeeded to make out case for further inquiry. Accordingly, he is admitted to post-arrest bail subject to his furnishing solvent surety in the sum of Rs.300,000/- (Rupees three hundred thousand only) and PR bond in the like amount to the satisfaction of the learned trial Court.

12. It is, however, clarified that the observations made herein are tentative in nature and shall not prejudice the merits of the case at trial.

J U D G E