IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Bail Application No.S-366 of 2025

Applicant:	Abdul Karim son of Muhammad Juman, Khoonharo, *through* Mr.Asad Ali Khakhrani, Advocate.
The State:	*through* Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.
Complainant:	Abdul Ghani Khoso, t*hrough* Mr. Zulfiqar Ali Panhwar, Advocate.
Date of Hearing:	06-10-2025
Date of Order:	06-10-2025

O R D E R

Ali Haider 'Ada', J:- Through the instant bail application, the applicant seeks post-arrest bail in Crime No. 40 of 2025, registered at Police Station K.N. Shah, for an offence punishable under Section 489-F, P.P.C. The alleged incident is stated to have occurred on 06.02.2025, whereas the FIR was lodged on 09.03.2025. The record reflects that the applicant had initially approached the learned Sessions Judge, Dadu, for the grant of pre-arrest bail; however, the matter was entrusted to the learned Additional Sessions Judge-II, Mehar, who, after hearing the parties, dismissed the same vide order dated 30.04.2025, whereupon the applicant was taken into custody from the Court premises. Subsequently, the applicant moved an application for post-arrest bail before the learned Judicial Magistrate-II, K.N. Shah, which too was dismissed vide order dated 24.05.2025. Thereafter, he again approached the learned Sessions Judge, Dadu, who entrusted the matter to the learned Additional Sessions Judge-II, Mehar, for disposal. The said Court, after hearing the parties, once again declined the concession of bail through order dated 11.06.2025.

2. The essence of the facts of the case is that the complainant, being a landlord, sold wheat grain to one Abdul Karim (the present applicant), who is the owner of a flour mill situated at Ranwat Laghari Road, K.N. Shah City, during the year 2024. An amount of Rs. 2,157,000/- remained outstanding against the applicant, despite repeated demands made by the

complainant for its payment. The applicant, instead of making the payment, issued a cheque dated 10.01.2025 for an amount of Rs.15,70,000/- in partial discharge of the said liability. However, upon its presentation before the concerned bank, the cheque was dishonoured on 06.02.2025. The complainant asserts that upon approaching the applicant for settlement of the outstanding amount, he was put off on false assurances and hollow promises. Having no other alternative, the complainant lodged the FIR on 09.03.2025, mentioning the date of incident as 06.02.2025, when the cheque was dishonoured and the amount was demanded.

3. Learned counsel for the applicant contends that the dispute arises out of a purely business transaction, which fact stands admitted in the FIR itself. He submits that the applicant had no dishonest or fraudulent intention at the time of issuance of the cheque, and that a substantial portion of the liability has already been satisfied. It is further argued that the complainant, being motivated by greed, is attempting to extract interest on the amount under the garb of criminal proceedings. He further submits that there exists an inordinate delay in lodging of the FIR, which remains unexplained, and that the alleged offence does not fall within the prohibitory clause of Section 497, Cr.P.C. In support of his submissions, learned counsel has placed reliance upon the cases reported as 2025 YLR 711, 2025 YLR 713, and PLD 2017 SC 733.

4. Conversely, the learned Deputy Prosecutor General appearing for the State vehemently opposes the bail plea. He submits that the instant case pertains to a financial transaction, wherein it is a common practice that cheques are issued against outstanding loans or business obligations; however, upon dishonour of such cheques, the complainant is left with no alternative remedy except to invoke Section 489-F, P.P.C. The learned DPG, therefore, contends that the applicant is not entitled to the concession of bail, and prays for dismissal of the instant application with affirmation of the impugned orders passed by the Courts below.

5. On the other hand, the learned counsel for the complainant has strongly opposed the bail application. He contends that the applicant is fully involved in the commission of the alleged offence and is liable to pay the outstanding amount owed to the complainant. It is further argued that the applicant is a habitual defaulter, as a number of criminal cases have

previously been registered against him. The learned counsel has also placed on record the certified true copies of the case diaries of the trial Court, which, according to him, demonstrate that the accused/applicant is deliberately delaying the proceedings**.** In support of his contentions, learned counsel has placed reliance upon the case reported as 2023 YLR Note 33.

6. Heard learned counsel for the parties. Record has also been perused with their assistance.

7. From the perusal of the F.I.R, it transpires that the date and time of the incident has been mentioned as 06.02.2025, whereas the cheque in question is alleged to have been issued on 10.01.2025. Moreover, there is no tangible proof available on record to establish that the present applicant/accused actually received the alleged amount from the complainant as claimed. In this regard, support may be drawn from the case of ***Ali Anwar Paracha v. The State*** **(2024 SCMR 1596).**

8. Furthermore, there is considerable delay between the date of issuance of the cheque and the preparation of the dishonor memorandum. The cheque is shown to have been issued on 10.01.2025, whereas the bank memo reflecting insufficiency of funds bears the date 06.02.2025, i.e., after a lapse of more 25 days. It is also noteworthy that the incident was reported to the police on 09.03.2025**,** with an unexplained delay of nearly one month. Such unexplained delay in presentation of the cheque and issuance of the dishonor memo, prima facie, creates doubt, Moreover, the existence of business transactions between the parties' stands admitted; therefore, the element of dishonest issuance of cheque is not free from doubt. It is also a settled principle that Section 489-F, P.P.C. is not to be used as a tool for mere recovery of amounts arising out of business transactions. Hence, whether the cheque was issued dishonestly, in fulfillment of an obligation, or towards repayment of liability, is a matter that can only be determined after recording of evidence at trial. At this tentative stage, the case squarely falls within the ambit of further inquiry as envisaged under Section 497(2), Cr.P.C. Reliance is placed upon the case of ***Atif Ali v. The State*** **(2024 SCMR 2066).**

9. It is also significant to note that the alleged offence under Section 489-F, P.P.C. does not fall within the ambit of the prohibitory clause

contained in Section 497, Cr.P.C. The principle consistently laid down by the Superior Courts is that where the offence does not fall within the prohibitory clause, grant of bail is to be considered as a rule, while its refusal is to be treated as an exception, subject to existence of extraordinary circumstances. The rationale behind this settled proposition is that in non-prohibitory offences, the law presumes that the accused should not be unnecessarily deprived of his liberty during the pendency of the trial, particularly when his guilt is yet to be determined. The Hon'ble Supreme Court of Pakistan, in the case of ***Noman Khaliq v. The State and another*** **(2023 SCMR 2122),** has reiterated the said principle. Applying the above principle to the present case, the record does not reveal any such exceptional circumstances that may justify withholding the concession of bail from the applicant. Accordingly, the case of the applicant does not call for deviation from the general rule of granting bail in non-prohibitory offences.

10. In view of the foregoing reasons and tentative assessment of the material available on record, the applicant has succeeded in making out a case for grant of post-arrest bail. Accordingly, the instant bail application is allowed. The applicant, Abdul Karim son of Muhammad Juman, Khoonharo, is admitted to post-arrest bail subject to his furnishing a solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and a personal bond in the like amount to the satisfaction of the learned trial Court. Needless to observe that the above findings are purely tentative in nature and shall not prejudice the case of either party at the trial. The learned trial Court is expected to decide the case strictly on the basis of evidence brought before it, without being influenced in any manner by these observations. However, the learned trial Court is directed to conclude the trial within a period of three months**,** and no unnecessary adjournment shall be granted except on rare and exceptional occasions**.** In case the applicant/accused fails to pursue or proceed with the matter diligently**,** the trial Court shall report such conduct to this Court for passing an appropriate order or for revisiting the present bail order**,** if deemed necessary.

JUDGE