

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.946 of 2025

Muhammad Javed Malik son of Wasi Ahmed Malik....Applicant/Accused

Versus

The State.....Respondent

Date of Hearing : 28.10.2025

Date of Short Order : 28.10.2025

For the Applicant : Mr. Karamullah Qureshi, Advocate.

For the complainant : Mr. Arif Khan, Advocate.

For the State : Mr. Muhammad Noonari, D.P.G.

ORDER

TASNEEM SULTANA, J: Through this criminal bail before arrest application, the applicant Muhammad Javed Malik son of Wasi Ahmed Malik seeks concession of pre-arrest bail in Crime No.578 of 2024 registered at Police Station Azizabad, Karachi, under Section 489-F, PPC. Earlier his bail plea was declined by the learned Vth Additional Sessions Judge, Karachi Central vide order dated 28.03.2024.

2. Brief facts of the prosecution case as narrated by the complainant Kashif ur Rehman in the FIR are that about one and half years ago his friends Shamim and Waqar introduced him with Muhammad Javed Malik son of Wasi Ahmed Malik (present applicant) and informed about 1200 Square yds. land situated in Orangi Town; Shamimuddin and Waqar executed agreement with the applicant/accused and the complainant paid certain amounts in cash as well as through pay order to the tune of Rs.9,28,32,000/-, however, after agreement, Shamim and Waqar disappeared; the complainant approached KMC about whereabouts of the said persons who disclosed that the documents of land provided are forged, therefore, the complainant asked applicant/accused to return the amount whereupon cheque No.00306684 to the tune of Rs.5,28,00,000/ drawn on Askari Bank Askari Branch was issued by the applicant/ accused and on presentation in his bank account on

40.09.2024, the same was dishonoured on the ground payment stopped by drawer, hence this FIR.

3. Learned counsel for the applicant contended that the present applicant/accused has been falsely implicated; that there is a delay of more than one month in lodging of FIR; that the complainant himself has mentioned in the FIR that the applicant was introduced by his friends, who entered into an agreement and payment was made through them but the said persons have not been nominated in the FIR; that the matter is purely a civil dispute, but till date no civil litigation has been filed; that the essential ingredient of dishonest intention at the time of issuance of cheques is lacking; that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C.; and that the applicant is ready to face the trial, therefore, he deserves the concession of bail.

4. Conversely, learned Additional P.G assisted by learned counsel for the complainant opposed the grant of bail; contending that the applicant, in order to deceive the complainant, issued cheque amounting to a substantial sum which were all dishonoured on presentation; that such conduct prima facie constitutes a fraudulent and dishonest act attracting the mischief of Section 489-F PPC; that the offence, being against public confidence in commercial dealings, does not warrant any leniency at the stage of bail.

5. Heard. Record perused.

6. From a tentative assessment of the material available on record, it appears that the allegation against the applicant is of issuing cheque to the complainant, which on presentation was dishonoured. The claim of complainant, however, revolves around agreements for purchase of a property, whereas the applicant asserts that compromise was made between the parties.

7. Prima facie, the mere issuance of a cheque(s) and its being dishonored by itself is not an offense, unless and until dishonesty on the part of a payer is proved.

8. Provisions of Section 489-F,P.P.C.,will only be attracted if the following essentials ingredients are fulfilled and proved by the prosecution :-

- (i) *issuance of the cheque,*
- (ii) *such issuance was with dishonest intention;*
- (iii) *the purpose of issuance of cheque should be :-*
 - (a) *to repay a loan; or*
 - (b) *to fulfill an obligation (which in wide term inter-alia applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds a person to some performance).*
- (iv) *on presentation, the cheques are dishonored. However, a valid defense can be taken by the accused, if he proves that;-*
 - (i) *he had made arrangements with his bank to ensure that the cheques would be honored; and*
 - (ii) *that the bank was at fault in dishonoring the cheque.*

9. Merely, receiving a huge amount of money in a business transaction and its subsequent not delivery to the concerned person requires declaration on the subject by the competent court of law and as such there are remedies available to the aggrieved party, however at this stage this court cannot determine the validity of such transaction between the parties on the subject issue at the bail stage, therefore, the controversy between the parties seems to be of a civil nature based on documentary evidence as per narration made by the complainant in the FIR, however, the law on the aforesaid subject is now settled and the maximum relief for the complainant of the case is the conviction of the responsible person and punishment as a result thereof, which may extend to 3 years or with a fine or with both. Primarily, the offense under Section 489-F, P.P.C. has been inserted in Chapter XVIII of P.P.C., regarding offenses relating to documents and to trade of property marks.

10. When on 25.10.2002, Section 489-F, P.P.C. was inserted in P.P.C., Order XXXVII, C.P.C. was already a part of the statute book providing the mode of recovery of the amounts on the subject matter of negotiable instruments, and a complete trial is available for the person interested in the recovery of the amounts of a dishonored cheque, therefore, not only that the complainant in a criminal case under Section 489- F, P.P.C. cannot ask a Criminal Court to effect any recovery of the amount involved in the cheque, but also the

amount whatsoever high it is, would not increase the volume and gravity of the offense.

11. The offence alleged under Section 489-F, PPC carries a maximum punishment of three years and, therefore, does not fall within the prohibitory clause of Section 497, Cr.P.C. The settled principle is that in such cases, grant of bail is a rule and refusal an exception. Reliance is placed on Shehzad v. The State (2023 SCMR 679) and Tariq Bashir and others v. The State (PLD 1995 SC 34). The Hon'ble Supreme Court has repeatedly held that bail is neither punitive nor preventive, as punishment begins only after conviction. If a person is mistakenly granted bail, such error can be corrected upon conviction, whereas wrongful pre-trial detention, if ultimately found unjustified, causes irreparable harm to liberty. Reliance is also placed upon the judgment in Nazir Ahmed alias Bharat v. The State and others (2022 SCMR 1467), wherein it was observed as under:

“Section 489-F of P.P.C. is not a provision which is intended by the legislature to be used for recovery of an alleged amount, rather for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of C.P.C.”

12. The FIR was lodged more than one month after the cheque was dishonoured, with no plausible explanation of such delay; such inaction, prima facie, raises doubt regarding the bona fides of the complainant. Investigation has been completed, challan has been submitted. The applicant has joined the investigation.

13. In view of the above facts and circumstances, interim pre-arrest bail granted to the applicant vide order dated 15.04.2025 was confirmed on the same terms and conditions by short order dated 28.10.2025 and these are the reasons for the same.

14. The applicant shall attend the trial regularly and shall not misuse the concession of bail; any violation shall entail cancellation of bail according to law. The observations made herein are tentative in nature and shall not prejudice either party at trial.

JUDGE

Ayaz Gul