

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Criminal Bail Application No.796 of 2025

Applicant : Muhammad Amin S/o Abdul Aziz
through M/s. Muniruddin and Muhammad
Yaseen Khan Azad, Advocates

Complainant : Ayaz Ahmed Solangi S/o Abdul Lateef
Solangi through M/s. Shaikh Jawaid Mir &
Agha Atta Muhammad Khan, Advocates

Respondent : The State
through Mr. Muhammad Noonari, DPG

Date of hearing : 17.09.2025

Date of order : 17.09.2025

ORDER

Dr. Syed Fiaz Ul Hassan Shah, J. - Through this Bail Application, applicant/accused seeks pre-arrest bail in Crime No.26/2025 for offence under Section 489-F PPC registered at PS Preedy. His bail plea has been declined by the learned Addl. Sessions Judge-XI, Karachi South [Trial Court] vide order dated 20.03.2025.

2. Brief facts of the case are that Complainant has given an amount of Rs.30,00,000/- with one Builder Muhammad Sarwar son of Muhammad Tufail for investment purpose and the present applicant became the guarantor; however, when the said Builder failed to fulfill his commitment, he issued a cheque of Rs.15 lacs which on presentation became bounce. Hence, the instant FIR was lodged.

3. Learned counsel for the applicant contends that though name of the applicant has given in the FIR as one of the accused for the commission of offence under Section 489-F PPC however it is an admitted position that the cheque was purportedly issued by the main accused Muhammad Sarwar son of Muhammad Tufail and only role assigned against the applicant is that he was the guarantor.

4. On the other hand, learned counsel for the complainant has strongly opposed for grant of bail and stated that it is the applicant on whose behalf cheque has been issued by main accused. Besides this, he is also issuing threats and moving false application to the Sindh Bar Council which is nothing to do with the private affairs of the counsel/complainant as it is his legitimate money which has been invested with the applicant on account of investment which ought to be returned. Learned DPG has supported the contentions of learned counsel for the complainant.

5. I have heard the learned counsel for the parties and with their able assistance perused the record.

6. It is admitted position that the cheque has been issued by the main accused Muhammad Sarwar son of Muhammad Tufail to the complainant bearing Cheque No.00033915 worth Rs.15 lacs drawn on MCB Bank, Phase-IV DHA Branch; as such, ingredients of Section 489-F PPC does not attract to the extent of the case of the present applicant. The only role assigned in the FIR and also in the charge sheet presented before the trial Court is that applicant was the guarantor on the verbal instruction. The veracity of it is yet to be determined by the trial Court when the prosecution will present their evidence alongwith material record. The offence does not fall within

prohibitory clause and the dictum laid down by the Supreme Court of Pakistan that grant of bail in non-prohibitory is a matter of right and refusal is exception is attracted in presence case. Challan has been submitted and the applicant is no more required for investigation.

7. The doctrine of rule of consistency or equal treatment, traditionally applied by courts in cases of post-arrest bail, has now been authoritatively extended to pre-arrest bail jurisprudence. The Hon'ble Supreme Court of Pakistan, in its judgment ***Jamaluddin Rabail v. The State (Criminal Petitions No. 41-K & 42-K of 2023)***, has laid down the principle that the doctrine of consistency is equally applicable in cases involving pre-arrest bail. The relevant portion of the judgment is instructive and delineates that although the considerations for grant of pre-arrest and post-arrest bail are generally distinct, where the role ascribed to both Applicant is identical, the denial of relief to one on the basis of procedural distinction would be illusory. It was observed that if the Applicant enjoying ad interim pre-arrest bail is denied relief solely on the ground that pre-arrest bail entails different considerations, while the co-accused is granted post-arrest bail on merits, then upon arrest, the petitioner would immediately become entitled to post-arrest bail on the plea of consistency. Such a situation would render the distinction academic and defeat the principle of equal treatment. Reliance is placed on the following precedents:

- *Muhammad Ramzan v. Zafarullah (1986 SCMR 1380)*
- *Kazim Ali and others v. The State and others (2021 SCMR 2086)*
- *Muhammad Kashif Iqbal v. The State and another (2022 SCMR 821)*
- *Javed Iqbal v. The State through Prosecutor General of Punjab and another (2022 SCMR 1424)*

8. Furthermore, the principles governing the grant of pre-arrest bail have been elaborated by the Hon'ble Supreme Court in ***Rana Muhammad Arshad v. Muhammad Rafique and another*** (PLD 2009 SC 427), wherein it was held that such relief should be confined to cases where a good prima facie case is made out in respect of the alleged offence; the denial of bail would result from some ulterior motive aimed at injuring the applicant; or the applicant would suffer irreparable harm if bail is refused.

9. The jurisprudence governing the grant of bail is fundamentally anchored in the principle of reasonableness, requiring a tentative assessment of each case on its own merits and factual matrix. This assessment is not merely procedural but is informed by the broader analogy that, should the accused ultimately be acquitted after prolonged trial proceedings, the criminal justice system does not provide any statutory mechanism for reparation or compensation for the extended period of incarceration endured under unproven charges. It is, therefore, legally and morally untenable to keep an accused person incarcerated indefinitely while awaiting the conclusion of trial, especially when such proceedings may culminate either in conviction or acquittal. In the latter scenario, the absence of statutory remedies for wrongful or prolonged detention underscores the necessity of bail as the only viable safeguard against irreparable harm. This principle has been consistently recognized and developed by the Superior Courts of Pakistan, which have emphasized the doctrine of *tentative assessment*—a judicial tool that enables courts to evaluate the sufficiency of material available at the bail stage without delving into conclusive findings. Each case must

be assessed independently, with due regard to its peculiar facts and circumstances. In the present matter, upon conducting such tentative assessment and examining the statutory framework, it is evident that the case does not fall within the prohibitory clause of Section 497 of the Criminal Procedure Code. Accordingly, the considerations for grant of bail remain governed by the settled principles of law and judicial discretion.

10. At this belated stage, Mr. Shaikh Jawaid Mir, learned counsel for the complainant has put appearance and states that the impugned order dated 20.03.2025 passed by the trial Court rejecting the bail application of the applicant on the ground that the applicant was not present before the trial Court. In reply, learned counsel for the applicant states that the applicant was not allowed to appear before the trial Court as there were serious threats to the life of the applicant and such facts have mentioned at paragraph-8 of the application.

11. In view of the above, the instant bail application is allowed. The interim pre-arrest bail granted to the applicant vide order dated 24.03.2025 is hereby confirmed on same terms and condition with modification that the applicant shall not proceed abroad without permission of trial Court.

12. It is clarified that the observations made hereinabove are tentative in nature and shall not prejudice the trial Court, which shall decide the case strictly on its merits and in accordance with law.

JUDGE

Kamran/PS