

IN THE HIGH COURT OF SINDH AT KARACHI

**Criminal Bail Application No.2661 of 2025**

Ahmed Ali son of Shamraiz.....Applicant/Accused

Versus

The State.....Respondent

*Date of Hearing* : 05.11.2025

For the Applicant : Mr. Imran Khan, Advocate.

For the complainant : Complainant preset in person.

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

**ORDER**

**TASNEEM SULTANA, J:** Through this criminal bail before arrest application, the applicant Ahmed Ali son of Shamraiz seeks pre-arrest bail in Crime No.172 of 2025 registered at Police Station Civil Lines, under Sections 489-F, PPC. Earlier same relief was granted but was recalled by the learned IInd Additional Sessions Judge, Karachi South vide order dated 29.09.2025.

2. Brief facts of the prosecution case, as narrated by the complainant Shah Mir S/o Muhammad Arshad are that the applicant, who is his acquaintance since childhood, offered to send him to Europe against a total amount of Rs.8,10,000/-. In this regard, the complainant transferred Rs.7,60,000/- online in installments to the applicant's Meezan Bank accounts (Nos. PK64MUCV1210005011016161 and PK56MEZN0001910102294942), while the remaining amount of Rs.50,000/- was paid in cash. The applicant issued a cheque bearing No.46068552, drawn on Meezan Bank Limited, North Napier Road Branch, dated 24.08.2024, for Rs.8,10,000/- as a guarantee, which upon presentation was dishonoured. Thereafter, despite repeated demands, the applicant failed to return the amount and allegedly extended threats of dire consequences when the complainant insisted on repayment, which led to the registration of the present FIR.

3. Learned counsel for the applicant contended that the applicant has been falsely implicated with mala fide intent; that there is an

unexplained delay of about ten months in lodging the FIR; that the complainant failed to produce any documentary evidence on record to show the existence of any enforceable liability between the complainant and applicant; that pendency of other cases against an accused not disentitle him from concession of bail, because every case has its own merits; that the essential ingredient of dishonest intention at the time of issuance of the cheque is lacking; and that the alleged offence does not fall within the prohibitory clause of Section 497 Cr.P.C. Hence bail may be confirmed.

4. Conversely, learned D.P.G. opposed the plea and argued that the applicant issued a substantial cheque which was dishonoured upon presentation, thereby defrauding the complainant; that the dishonoured cheque was issued not as a security but towards discharge of a legally enforceable liability; and that such conduct prima facie attracts the mischief of Section 489-F, PPC. She contended that the offence undermines public confidence in financial transactions and does not warrant leniency at the bail stage.

5. Heard. Record perused.

6. A tentative assessment of the material available on record reveals that the gravamen of the allegation against the applicant is the issuance of a cheque which was dishonoured upon presentation. The dispute, however, emanates from a property transaction, and the applicant's stance is that the cheque was issued merely as security and not for encashment. 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.

7. 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.*

8. At this stage, the element of dishonest intention appears a matter to be determined by the trial Court after recording of evidence. The dispute, on the face of record, arises from a contractual or civil transaction, and the penal provisions of Section 489-F, PPC, may not be attracted in the absence of such intent. The offence alleged does not fall within the prohibitory clause of Section 497 Cr.P.C., and the case calls for further inquiry.

9. 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.

10. 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.”*

11. The FIR was lodged more than ten months 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.

12. In view of the above facts and circumstances, interim pre-arrest bail already granted to the applicant/ accused vide order dated 07.10.2025 was confirmed on same terms and conditions, by a short order dated 05.11.2025 and these are the reasons for the same.

13. 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