

# **THE HIGH COURT OF SINDH AT KARACHI**

## **Criminal Bail Application No.3168 of 2025**

Applicant : Shakir Hussain son of Qurban Hussain through Mr. Muhammad Irfan Aziz, Advocate

Complainant : Sabir Hussain son of Ibrahim through Mr. Saadi Sardar, Advocate

The State : Mr. Zahoor Ahmed Shah, Additional Prosecutor General, Sindh

Date of hearing : 15.12.2025

Date of decision : 15.12.2025

## **ORDER**

**Jan Ali Junejo, J.-** Through this post-arrest criminal bail application under Section 497 Cr.P.C., the applicant seeks his enlargement on bail in the FIR No.314/2025, under Section 489-F PPC registered at PS Kharadar, Karachi. Earlier bail applications moved before the learned XXVI Judicial Magistrate, Karachi South, were declined vide orders dated 23.08.2025 and 24.09.2025; a subsequent post-arrest bail application No. 3731/2025 before the learned I Additional Sessions Judge (MCTC), Karachi South, was dismissed vide order dated 18.10.2025. The present application assails the said refusal orders, asserting misreading/non-reading of material and invoking, inter alia, the principles governing grant of bail.

2. The complainant Shabbir Hussain, a sanitary businessman and neighbour of the applicant, states that in December 2024 the applicant, acting as an estate broker, introduced him to Syed Iftikhar Madni for the purchase of a portion on the 2nd floor of Plot No. A-96, Block-C, North Nazimabad, Karachi, for a total sale consideration allegedly settled at Rs.1,53,00,000/-. Between February and March 2025, the complainant claims to have paid Rs.24,00,000/- to the applicant and thereafter the remaining amount as well. Upon cancellation of the agreement as the premises remained under construction, he demanded a refund. The applicant allegedly issued two cheques, No.CA-57866406 dated

12.03.2025 for Rs.49,00,000/- and No.CA-57866410 dated 05.06.2025 for Rs.40,00,000/-, promising to pay the balance subsequently; both cheques were dishonoured upon presentation on 27.06.2025 at Bank Al-Habib, Kharadar Branch. FIR No.314/2025 was lodged on 14.07.2025 under Section 489-F PPC. During investigation, statements under Section 161 Cr.P.C. were recorded, documents including a sale agreement were collected, bank memos of dishonour were verified, and Sections 420/406/34 PPC were added against co-accused persons. Challan was submitted against the present applicant.

3. Learned counsel for the applicant contends that the applicant is innocent and has been falsely implicated; that the complainant's narration is vague as to the exact nature, mode, and channel of payments allegedly made to the applicant; that there is a delay of 17 days in lodging the FIR from the date of dishonour (27.06.2025 to 14.07.2025) without satisfactory explanation; that the subject cheques were, in fact, related to inter se dealings between the applicant and co-accused Iftikhar Madni pursuant to a written agreement produced by the co-accused, hence the element of "dishonestly issuing a cheque towards repayment of a loan or fulfillment of an obligation" vis-à-vis the complainant is, at the least, disputed; that Sections 420/406/34 PPC were added later and their applicability to the applicant's specific role is questionable; that the co-accused has already been granted bail and the rule of consistency favors the applicant; that the offence does not fall within the prohibitory clause of Section 497 Cr.P.C.; that the case calls for further inquiry under Section 497(2) Cr.P.C.; that the applicant is a local, not a hardened criminal, and there is no likelihood of absconsion or tampering with the prosecution evidence. Reliance is placed on case law including 2023 SCMR 2122, 2024 MLD 1363, 2024 YLR 1596, and 2025 YLR 1368 to argue that in non-prohibitory offences, bail is a rule, and where the transaction has civil overtones or the ingredients of 489-F PPC are debatable, concession of bail should follow. Learned counsel prays for grant of post-arrest bail.

4. Conversely, learned Additional Prosecutor General, assisted by learned counsel for the complainant, opposes the application, submitting that the applicant is specifically nominated; that he admittedly issued the two cheques drawn on his bank account which were dishonoured due to insufficient funds, attracting Section 489-F PPC; that the materials collected, including the sale agreement and bank memos, sufficiently connect the applicant; that the delay stands explained in the backdrop of the parties' dealings; that the rule of consistency does not apply inasmuch as the co-accused did not issue the subject cheques; that the matter does

not fall within the purview of further inquiry; and that if released on bail, there is a reasonable apprehension of tampering with witnesses and absconsion. It is prayed that the application be dismissed.

5. I have considered the arguments advanced by the learned counsel for the Applicant, the learned counsel for the Complainant, and the learned A.P.G. for the State, and have also made a tentative assessment of the material available on record, as is permissible at the bail stage. Upon such tentative assessment, it appears that the principal allegation against the Applicant is the issuance of two cheques which were dishonoured upon presentation, thereby allegedly constituting an offence under Section 489-F, P.P.C. The maximum punishment prescribed under Section 489-F, P.P.C. does not exceed three years' imprisonment; consequently, the offence falls outside the prohibitory clause of Section 497(1), Cr.P.C. The settled principle is that, in non-prohibitory offences, grant of bail is a rule and refusal an exception, subject to the existence of extraordinary circumstances such as likelihood of absconsion, tampering, or misusing the concession of bail.

6. For an offence under Section 489-F PPC, the cheque must be issued dishonestly for the repayment of a loan or fulfillment of an obligation. The record placed before this Court indicates that: A sale agreement exists between the complainant and a co-accused regarding the subject property. The applicant is reflected as a witness/facilitator in the said agreement, and the complaint attributes receipt of various sums to him. The two cheques are said to have been issued by the applicant and were dishonoured. However, the precise character of the underlying obligation vis-à-vis the applicant, whether the cheques were in discharge of his own liability to the complainant, or were issued in consequence of inter se obligations with the co-accused, appears disputed. The co-accused has produced a written agreement said to mention these cheques. Whether the applicant's cheques were for repayment of a "loan" or for "fulfillment of an obligation" owed to the complainant, and whether the issuance was "dishonest," are matters requiring evidence. At the bail stage, such contested factual determinations ordinarily fall within the remit of "further inquiry" under Section 497(2) Cr.P.C.

7. The FIR was registered on 14.07.2025, whereas the dishonour is stated to have occurred on 27.06.2025. While a 17-day delay is not, per se, fatal, the explanation for such delay in cases of alleged cheque dishonor, especially where the parties were engaged in a continuing civil/commercial relationship, has a bearing on the tentative assessment of

malafides and concoction. This aspect, in conjunction with the disputed substratum of the transaction, also tends to bring the matter within the sphere of further inquiry.

8. Sections 420/406/34 PPC were added during investigation, primarily against co-accused, predicated on breach of trust/cheating allegations tied to the property deal. The applicant's specific role relative to those sections is not, at this stage, demonstrated with such clarity as to eclipse the benefit otherwise flowing from the non-prohibitory character of the principal allegation. Whether the essential ingredients of cheating or criminal breach of trust are met, and by whom, is yet to be determined by the trial court on evidence. The co-accused has been granted bail. Although the rule of consistency is not an absolute right, and the learned Sessions Court distinguished roles on the premise that the co-accused had not issued the cheques, parity here is considered in a broader sense: the underlying transaction is common; the civil complexion of the dispute is arguable; and culpability is intertwined. While the issuance of cheques is specifically attributed to the applicant, the disputed nature of the obligation and the civil background of the transaction indicate that, at least tentatively, the applicant's case is not worse than that of the bailed co-accused for the limited purpose of bail.

9. The challan has been submitted. No prior record of absconsion has been pointed out. Apprehensions of tampering with witnesses, though voiced, are generalized and not supported by concrete material. These can be sufficiently addressed through appropriate conditions. Without delving into a mini-trial and while refraining from conclusive findings, the cumulative effect of: (i) the non-prohibitory nature of the main offence; (ii) the disputed character of the obligation underlying the cheques; (iii) the civil/commercial milieu of the transaction; (iv) the delay in FIR; (v) submission of challan; and (vi) availability of conditions to neutralize risks, brings the case within the contemplation of "further inquiry" under Section 497(2) Cr.P.C. In case where bail was granted in an offence under Section 489-F, P.P.C. i.e., ***Ali Anwar Paracha v. The State and another (2024 SCMR 1596)***, the Honourable Supreme Court of Pakistan held that: *"In this view of the matter, the question whether the cheque was issued towards fulfilment of an obligation within the meaning of section 489-F, P.P.C. is a question, which would be resolved by the learned Trial Court after recording of evidence. The petitioner is behind the bars since his arrest. The maximum punishment provided under the statute for the offence under section 489-F, P.P.C. is three years and the same does not fall within the prohibitory clause of section 497, Cr.P.C. It is settled*

*law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception". In another similar offence under Section 489-F, P.P.C., in the case of **Muhammad Anwar v. The State and another (2024 SCMR 1567)**, the Honourable Supreme Court of Pakistan was pleased to grant bail by observing that: "In view of the above, the question whether the cheques were issued towards repayment of loan or fulfillment of an obligation within the meaning of Section 489-F, P.P.C. is a question, which would be resolved by the learned Trial Court after recording of evidence. The maximum punishment provided under the statute for the offence under Section 489-F, P.P.C. is three years and the same does not fall within the prohibitory clause of Section 497, Cr.P.C. It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception".*

10. For the reasons recorded above, the instant Criminal Bail Application is **allowed**. The applicant Shakir Hussain son of Qurban Hussain is admitted to post-arrest bail in FIR No.314/2025, under Section 489-F PPC (with allied sections added during investigation), Police Station Kharadar, Karachi, subject to furnishing a solvent surety in the sum of **Rs.200,000/- [Rupees Two Hundred Thousand Only]** and P.R. bond in the like amount to the satisfaction of the trial Court. The observations made herein are tentative in nature and are confined solely to the determination of the bail application. The learned Trial Court shall not be influenced by these observations and shall decide the case strictly in accordance with law on the basis of evidence produced before it. These constitute the detailed reasons for the short order dated 15.12.2025.

**JUDGE**

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