

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS
Criminal Bail Application No.S-173 of 2025
Jairam Das vs. The State

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For order on office objection.
- 2. For hearing of main case.

ORDER
21-07-2025

Mr. Ghulam Nabi Meo, Advocate for the applicant alongwith applicant.
Mr. Aziz Ahmed Laghari, Advocate for the complainant.
Mr. Dhani Bakhsh Mari, Astt: .Prosecutor General a/w ASI Abdul Waheed of PS Satellite Town, Mirpurkhas.

Ali Haider 'Ada', J:- Through the present bail application, the applicant seeks pre-arrest bail in connection with offences punishable under Sections 489-F, 506(2), 420, and 422 of the Pakistan Penal Code, arising from Crime No. 79/2025, registered at Police Station Satellite Town. Prior to filing this application, the applicant approached the learned Sessions Judge, Mirpurkhas, who subsequently referred the matter to the Additional Sessions Judge-I, Mirpurkhas. However, the said Court rejected the applicant's bail application.

2. The facts of the prosecution case are that an agreement was executed between the parties for the sale of land, and as part of the business transaction, the applicant issued cheque No. 00000827, dated 01-01-2025, for the amount of Rs. 100,000,000/- (Rupees Ten Crore). This cheque was later dishonored on 15-04-2025. The complainant subsequently registered the FIR on 11-06-2025. Following the completion of the investigation, the Investigating Officer submitted the challan, and the applicant was sent up to stand trial before the Magistrate having jurisdiction.

3. The learned counsel for the applicant submits that a plain reading of the FIR reveals that there has been no fulfillment of any obligation by the applicant. The cheque in question was issued merely as security for the payment of the agreed amount, with the understanding that it would be returned upon fulfillment of the terms. Furthermore, the learned counsel points out that, according to the revenue records, the complainant became the full owner of the property on 05-12-2024. Despite this, the complainant executed the agreement as

an exclusive owner, although he was not legally competent to do so at that time. The learned counsel relies on the pending Civil Suit, which is contested by the complainant, to support this claim. The learned counsel further submits that the dispute between the parties arises out of a business transaction related to the development of a housing society. Given that the complainant was not the lawful owner of the property at the time the agreement was executed, the applicant questions why such a business dispute would have arisen. There is no malafide intention on the part of the applicant, as the transaction was purely business-related. In addition, the learned counsel refers to the legal notice issued by the complainant's counsel, which acknowledges that Rs. 40 million was paid to the complainant by the applicant. The notice also states that the amount was to be paid in favor of the complainant. The learned counsel places reliance on the rulings in 2021 MLD 589 and 2023 SCMR 1948 to further substantiate the applicant's position.

4. On the other hand, the learned counsel for the complainant submits that the applicant acted with malafide intent in order to usurp a substantial amount of money. It is contended that the housing society in question was developed based on mutual trust between the parties, as evidenced by the terms of the agreement. According to the agreement, there was a 70 and 30 percent profit-sharing ratio between the applicant and the complainant. Furthermore, an amount of Rs. 13 crore is reportedly missing from the account jointly operated by both parties. It is further argued that the investigation has been completed, and the Investigating Officer, after conducting a fair and impartial inquiry, placed the name of the applicant/accused in the report, finding his involvement not only in the dishonour of the cheque but also in acts amounting to cheating and breach of trust. In support of his arguments, the learned counsel places reliance on the case law of 2019 SCMR 1129, PLD 2016 Supreme Court 171, 2018 YLR 1865, 2014 YLR 372, 2018 MLD 1521, 2016 MLD 1450, PLD 2020 Lahore 97.

5. Conversely, the learned Assistant Prosecutor General supported the impugned order passed by the learned court below, contending that the basic ingredients required for malafide intent and ulterior motive are not present in the instant case. It is argued that the FIR was lodged by the complainant disclosing specific acts allegedly committed by the applicant, and nothing on record suggests that the proceedings were initiated with any ulterior motive or mala fide intention.

6. Heard the arguments advanced by the learned counsel for both parties as well as the learned Assistant Prosecutor General, and have carefully perused the material available on record with due care and caution.

7. From the material available on record, it clearly transpires that both parties had entered into a business arrangement concerning the development of a housing society, which involved substantial financial transactions. It is an admitted fact, even by the complainant, that he received an amount of Rs. 40 million from the applicant/accused. This fact alone demonstrates the existence of a commercial and financial relationship between the parties rather than a purely criminal transaction. Moreover, the agreement executed between the parties expressly stipulates a grace period of six months for the resolution of any disputes arising from the business dealings, including settlement of accounts or outstanding amounts. However, the complainant, in violation of the terms of the agreement, failed to honor the contractual clause by prematurely lodging the FIR without waiting for the agreed grace period to elapse. This conduct on part of the complainant raises serious doubts regarding the bona fides of the prosecution and suggests that the criminal machinery has been set in motion. It is settled that Section 489-F PPC is not intended to serve as a tool for the recovery of money. This sequence of events strongly suggests that the complainant slept over his rights and is now attempting to give a criminal colour to what is essentially a business dispute, possibly with the aim of exerting undue compression on the applicant. In this context, reliance is placed upon the case of *Abdul Saboor vs The State* 2022 SCMR 592, wherein The Honourable Apex Court held that:

As per the contents of the crime report, the petitioner was running a business of poultry; he borrowed some amount from the complainant and to settle the same, he issued the cheque in question to the complainant, which has been dishonored. It is an admitted position that the petitioner is behind the bars for the last six and half months whereas the maximum punishment provided under the statute for the offence under section 489-F, P.P.C. is three years and the offence 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. This Court in Muhammad Tanveer v. The State and another (PLD 2017 SC 733) has held that "once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception then the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special Courts." Prima facie 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. It is only to determine the guilt of a criminal act and award of a sentence, fine or both as provided under section 489-F, P.P.C. On the other hand, for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of C.P.C. At this stage, only a tentative

assessment of the matter is required and we cannot presume dishonesty on the part of the petitioner as any such determination would prejudice his right to a fair trial guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. Liberty of a person is a precious right which cannot be taken away without exceptional foundations. The law is very liberal especially when it is salutary principle of law that the offences which do not fall within the prohibitory clause, the grant of bail is a rule while its refusal is mere an exception. By following the aforesaid principle and taking into consideration all the facts and circumstances stated above, we are of the view that the case of the petitioner squarely falls within the ambit of section 497(2), Cr.P.C. entitling for further inquiry into his guilt.

8. Furthermore, the offence under Section 489-F PPC does not fall within the prohibitory clause of Section 497(1) of the Criminal Procedure Code. It is settled principle of law that in offences not falling under the prohibitory clause, the grant of bail is a rule, and refusal is an exception, particularly where the accused is not a hardened criminal, there is no likelihood of absconding, and the investigation has been completed. In this context, the Honourable Supreme Court has held in case of *Ali Anwar Paracha vs The State and another* 2024 SCMR 1596, that:

7. 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. Reference may be made to the case of Tariq Bashir v. The State (PLD 1995 SC 34) wherein it was held as under:--

"It is crystal clear that in bailable offences the grant of bail is a right and not favour, whereas in non-bailable offences the grant of bail is not a right but concession/grace. Section 497, Cr.P.C. divided non-bailable offences into two categories i.e. (i) offences punishable with death, imprisonment of life or imprisonment for ten years; and (ii) offences punishable with imprisonment for less than ten years. The principle to be deduced from this provision of law is that in non-bailable offences falling in the second category (punishable with imprisonment for less than ten years) the grant of bail is a rule and refusal an exception. So the bail will be declined only in extraordinary and exceptional cases.."

9. It is well settled principle of law that once the court concludes that the accused would become entitled to post arrest bail, then requiring him to undergo incarceration would be a mere procedural formalities devoid of meaningful purpose. As held by the Hon'ble Apex Court in *Criminal Petition for Leave to Appeal No. 255-L/2025*, titled *Mudassar Khursheed v. The State and another*, decided on 08.04.2025,

and in Criminal Petition No. 310 of 2025, titled *Muhammad Akhtar v. The State*, decided on 17.04.2025.

10. It is also noteworthy that the FIR was lodged with considerable delay. The record reflects that the cheque in question was dishonored on 15.04.2025 and the FIR was registered on 11.06.2025, after a lapse of nearly two months. This unexplained delay in approaching the law enforcement agency raises serious questions about the credibility and urgency of the grievance. Moreover, it is significant to note that the cheque itself was presented for encashment after a delay of more than three months from the date of its issuance. The complainant has not offered any plausible explanation for this undue delay either in presentation or registration of the FIR. Reliance is placed upon the case of *Imran Khan Brohi vs The State* 2025 YLR 617.

11. In view of the foregoing discussion, and after considering the material available on record as well as the submissions advanced by learned counsel for the parties, the applicant has made out a case for confirmation of bail. Accordingly, the interim pre-arrest bail earlier granted to the applicant is hereby confirmed, subject to the applicant furnishing an additional solvent surety in the sum of Rs. 1,000,000/- (Rupees One Million only) and a personal bond in the like amount, to the satisfaction of the Additional Registrar of this Court, within a period of one week from today. Failing which this order shall cease to have any effect.

JUDGE

Adnan Ashraf Nizamani.