

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.**

Cr. Bail Appln: No.S-975 of 2016.

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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For hearing.

06.01.2017.

Mr. Zahid Mallah, Advocate for the applicant.  
Mr. Shahid Ahmed Shaikh, A.P.G. for the State.

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**OMAR SIAL,J-**This is a post arrest bail application filed by accused/applicant Abdullah s/o Nabi Bux who is accused of an offence under sections 489-F and 420 PPC in crime number 268 of 2016 registered in the P.S. Kotri, District Jamshoro.

The brief facts of the case are that the accused/applicant is said to have taken a loan of Rs. 5,000,000 (Rupees five million) from the complainant Muhammad Hashim. On 24-5-2016 as partial repayment of the loan the accused/applicant wrote out a cheque of Rs. 1,000,000 (Rupees one million) to the complainant, which cheque was presented in the bank on 27-5-2016 and was returned the same day by the payee bank with the endorsement that the account was closed. An FIR was registered by the complainant and the accused/applicant arrested. The accused/applicant made a bail application before the learned Sessions Judge, Jamshoro, which bail application was rejected vide an order dated 7-11-2016.

I have heard the learned counsel for the accused/applicant as well as the learned APG and also gone through the record with their able assistance.

My observations are as follows:

1. Section 489-F of the PPC 1860 requires three ingredients to be fulfilled; (a) a cheque should have been dishonestly issued; (b) that it should be for the repayment of a loan or fulfillment of an obligation; and (c) the cheque is dishonored on presentation. In the present case there is absolutely no evidence of any date, time or place or as a matter of fact any detail of a loan or an obligation which the accused/applicant owed towards the complainant, the re-payment or fulfillment of which the said cheque was issued.
2. In Syed Ali Nawab vs. Nawab Siddiq Ali Khan (1969 SCMR 567) the Hon'ble Supreme Court has observed that "under Section 420 it is necessary to establish dishonest deception of the person deceived. Dishonest intention is a state of mind and is generally to be ascertained from the conduct of the accused and the surrounding circumstances." In the

current case, it is an admitted position that the complainant and the accused were business partners. There is no evidence on record at this stage to show that the accused has dishonestly induced the complainant to give him the Rs. 5,000,000. Intention will have to be proved through evidence.

3. There is a delay of forty-five days in lodging the FIR. There is no reason given in either the FIR or the challan filed by the police for this delay. According to the challan, the original returned cheque was also not produced by the complainant and the police registered the case on the basis of a photocopy. The unexplainable delay in the filing of the FIR and the apparently missing original instrument prima facie creates doubt, the benefit of which must go to the accused.
4. An offence under section 420 PPC is a bailable offence, whereas an offence under section 489-F PPC falls within the non-prohibitory clause of section 497 PPC.

In view of the above reasons, I allow this bail application of accused Abdullah s/o Nabi Bux and admit him to bail subject to his furnishing a solvent surety in the amount of Rs. 500,000 (Rupees five hundred thousand) and a PR bond in the like amount subject to the satisfaction of the trial court.

JUDGE.