

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

Cr. Bail Appl: No.S-888 of 2017

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**DATED                      ORDER WITH SIGNATURE OF JUDGE**

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For orders on office objection.  
For hearing.

01.02.2018

None present for applicant.  
Mr. Shahzado Saleem Nahiyoon, learned DPG

**OMAR SIAL, J.**- Applicant has sought post-arrest bail in Crime No. 237 of 2017, registered u/s 489-F PPC. at the Tando Adam City police station. Earlier, his post arrest bail application was turned down by the learned Civil Judge / Judicial Magistrate-1, Tando Adam on 02-10-2017.

2. Brief facts of the case are that the FIR in the case has been lodged by one Abdul Farooq on 19.09.2017. He states in the FIR that he has business dealings with the applicant, and that on 05.04.2017 the applicant purchased 4618 mann of Wheat for an amount of Rs.1399 per mann, for sale consideration of Rs.6003400/- of account bearing No.10279402 dated 15.09.2017, drawn on the Tando Adam branch of Bank Al-Habib, which cheque when presented for encashment at the bank counter was returned with the endorsement that there was insufficient fund. The aforementioned FIR was registered.

3. The complainant has been sent notices twice but had not made his appearance. Applicant's counsel remained absent. The applicant is languishing behind bars.

4. I have heard this bail application with the assistance of learned D.P.G.

5. The essential requirements of Section 489-F are:-

- i. a cheque issued dishonestly;
- ii. towards repayment of a loan of fulfilment of an obligation.
- iii. which is dishonoured on presentation.

6. Upon a query from the learned D.P.G, whether the prosecution was at this stage in possession of any evidence (a receipt, document, agreement etc.) which would shows the business dealings between the applicant and the complainant, the learned D.P.G replied that at the moment there appears to be none. It appears odd that such a large quantity of wheat has been sold without any documentary evidence. This issue will have to be decided after evidence is led.

7. Accordingly, prima facia and at this preliminary stage of bail, it appears that one of the ingredients of Section 489-F PPC, is not being satisfied. It is only after trial and after evidence is led in trial that the trial court will be able to conclude whether the cheque was issued in fulfilment of an obligation or a repayment of a loan.

8. The offence with which the applicant is charged carries a punishment of upto 3 years imprisonment and hence, does not fall within the prohibitory clause of section 497 Cr.P.C.

9. In view of the above, the applicant is admitted to post arrest bail subject to his furnishing a solvent surety in the amount of Rs. 1,00,000 (One Lac) and P.R. Bond in the like amount in each case to the satisfaction of the learned trial court.

JUDGE

Fahad Memon