

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Bail Application No. 1490 of 2023

Date	Order with signature of Judge
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For hearing of bail application

**15.8.2023**

Mr. Naseer Ahmed Panhwar advocate for the applicant.  
Mr. Zahoor Shah, APG alongwith complainant.  
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Through this bail application under Section 497 Cr.P.C., the applicant has sought admission to post-arrest bail in F.I.R No.99/2023, registered under Section 489- F PPC at Police Station Landhi. The earlier bail plea of the applicant has been declined by the learned Session Judge Karachi (East) vide order dated 24.06.2023 in Criminal Bail Application No.3190/2023.

2. The accusation against the applicant is that he issued a cheque bearing No.25453049 dated 09.11.2022 amounting to Rs.520,000/- in favor of the complainant and the same was dishonored by the concerned bank; as per a bank letter dated 21.02.2023 applicant was the sole proprietor of M/s FINCON International Pvt. Ltd company, such report of the incident was lodged with PS Landhi District Korangi on 17.02.2023 and FIR No. 99/2023 under Section 489-F PPC was lodged against the applicant.

3. It is, inter-alia, contended that the applicant is innocent and has falsely been implicated in this case. The learned counsel submitted that there is an unexplained and inordinate delay of approximately two months in the registration of the FIR; that no proof of loan or fulfillment of an obligation in terms of Section 489-F PPC was tendered nor how the subject amount of Rs.520,000/- was paid to the applicant and for what purpose which confirms the mala fide of the complainant and also makes it a case of further inquiry in terms of Section 497(2) Cr.P.C., that the offense under Section 489-F PPC do not fall within the prohibitory clause. He lastly prayed for allowing the bail application.

4. Learned APG assisted by the complainant, who is present in person has opposed the application and states that the learned trial Court has rightly dismissed the bail plea of the applicant and the applicant does

not deserve the concession of bail. Learned APG further submitted that Section 489-F PPC does not require proof of loan or fulfillment of an obligation to be disclosed at the bail stage. He prayed for the dismissal of the bail application.

5. I have heard learned counsel for the parties and with their assistance examined the documents and read Section 489-F PPC. Admittedly, there is an inordinate delay of two months in lodging the F.I.R., which has not been explained. In the essence of dishonesty issuing a cheque would require evidence for establishing the ingredients of Section 489-F, P.P.C. In the facts of the present case, such an assessment can be made at the trial to evaluate whether any improper benefit, if at all, has been derived by the applicant by retaining the alleged amount of the complainant. This commercial aspect of the matter cannot be determined at the bail stage in the present case. As dishonesty within the meaning of Section 489-F P.P.C., is yet to be determined by the Trial Court; and whether the complainant could be able to show that the alleged amount was paid to the applicant by him or to the Company and who is responsible. On the aforesaid proposition the Supreme Court in the cases of Ahmed Shakeel Bhatti Vs. The State (2023 SCMR 1) and Bashir Ahmed Vs. The State (2023 SCMR 748) has settled the dispute once and for all, as such the case of the applicant falls within the ambit of the ratio of the aforesaid decisions.

6. The offense under Section 489-F, P.P.C. is though non-bailable but does not fall within the prohibitory clause of Section 497, Cr.P.C. The law is very liberal especially when it is the salutary principle of law that in the offences, which do not fall within the prohibitory clause, the grant of bail is a rule while its refusal is merely an exception.

7. Prima facie Section 489-F of PPC is not a provision that is intended by the legislature to be used for the recovery of an alleged amount. Rather, it is only to determine the guilt of a criminal act and award of a sentence, fine, or both as provided under the said Section. This being the position, the question of whether the applicant is made guilty of an offense under Section 489-F PPC, requires further inquiry as contemplated under Section 497(2) Cr.P.C. Therefore concession of post-arrest bail is extended to the applicant/accused subject to his furnishing solvent surety in the sum of Rs.100,000/- (One Hundred Thousand Rupees), and P.R bond in the like amount to the satisfaction of the trial Court.

8. Needless to say that the observations made in this order are tentative and shall not influence the trial court while concluding the case. The learned trial court is to expeditiously proceed with the trial under law, and in case of abuse or misuse of the concession of bail by the applicant, including causing a delay in the conclusion of the trial, the prosecution may approach the competent court for cancellation of bail under Section 497(5), Cr.P.C.

9. This criminal bail application stands disposed of in the above terms.

JUDGE

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