

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
Criminal Bail Application No.1838 of 2023

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<b>Date</b>	<b>Order with signature of Judge</b>
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For hearing of bail application

**12.9.2023**

Mr. Muhammad Shafquat Tanoli advocate for the applicant  
Syed Meeral Shah Bukhari, Addl. P.G alongwith IO/SI Haroon Rasheed  
of P.S Zaman Town.  
Complainant Malik Shoaib is present in person.

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Through this bail application under Section 497 Cr.P.C., the applicant Shamsullah has sought admission to post-arrest bail in F.I.R No.792/2023, registered under Section 489-F PPC at Police Station Zaman Town, Karachi.

2. The accusation against the applicant as per contents of the FIR lodged by the Complainant is that the applicant executed an agreement with the complainant and on his behalf applicant issued one cheque dated 23.06.2023, amounting to Rs. 12,00,000/- to be drawn through Meezan Bank, Korangi Crossing Branch had been deposited by the complainant in his account but the same was dishonored with the reason of insufficient funds vide memo of bank endorsement dated 26.6.2023. Such a report of the incident was given to Police Station Zaman Town, Karachi on 9.7.2023, which registered F.I.R No. 792/2023, under Section 489-F PPC. The earlier bail plea of the applicant has been declined by the learned IVth Additional Sessions Judge (East) Karachi vide order dated 12.08.2023 in Criminal Bail Application No. 4421/2023.

3. It is inter-alia contended by learned counsel for the applicant that the applicant is innocent and has falsely been implicated in this case by the complainant with malafide intention and ulterior motives. He has further argued that as per the verbal agreement, the applicant had to pay the total amount of Rs. 12,00,000/- which was invested in business neither disclosed the nature of any business nor produced or referred to any contracted of business in the FIR, hence this case is required further inquiry within the meaning of under Section 497(2) Cr. P.C. He has further contended that the alleged offense carries maximum punishment of 03 years hence does not fall within the ambit of prohibitory class of Section 497(1) Cr. P.C and in such cases, grant of bail is a rule and its refusal is an exception. Per learned counsel securing the money in such a manner would be termed extortion, therefore the present FIR is based on

malafide intention and ulterior motives, and the present case against the applicant requires further inquiry. In support of his contention, he relied upon the cases of Abdul Saboor vs. The State **2022 SCMR 592**, Shah Zaman Ashraf vs. The State **2022 YLR Note 207**, Nazir Ahmed Vs. The State **2022 SCMR 1467** and Shahid Hussain vs. The State **2021 P Cr. L. J** Note 88. He lastly prayed for allowing the bail application.

4. Learned Addl. PG assisted by the complainant 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 post-arrest bail. He added that the accusation against the applicant is well founded, and the prayer of the applicant for the grant of post-arrest bail is liable to be dismissed. Per learned APG There are four ingredients of Section 489-F PPC, firstly, dishonest issuance of cheque, secondly, cheque must be issued for repayment of loan or discharge of liability, thirdly, cheque must be dishonored and fourthly, it must be dishonored at the fault of accused and not on the part of Bank. Learned APG emphasized that the word dishonestly is defined under section 24 of the Pakistan Penal Code, which provides, that whoever does anything to cause wrongful gain to one person to cause wrongful loss to the other person is said to do that thing dishonestly." Since the applicant/accused has issued a post-dated cheque leaf but the same was dishonored, and when he knew that, he had made no arrangements for encashment of the cheque just to cause wrongful gain to him and wrongful loss to the complainant; that the cheque leaf was not issued without consideration as per section 118 of the Negotiable Instruments Act. Learned APG further argued that since, no malice whatsoever has been alleged against the complainant for falsely implicating the applicant/accused with the commission of the alleged offense, which is a condition precedent for seeking post-arrest bail, besides, it is a settled principle of law that, while deciding bail application, tentative assessment is to be made, deeper appreciation avoided and only the contents of FIR, statements of PWs are to be looked into and there is sufficient material available with the prosecution to connect the applicant/accused with the commission of the alleged offense, therefore, bail application of the applicant was rightly rejected by the learned trial court. He prayed for the dismissal of this bail application.

5. I have heard learned counsel for the parties and with their assistance examined the documents and read section 489-F PPC applied by the prosecution in the present case.

6. Tentative assessment of the record reflects that the alleged offense took place on 26.06.2023 and was reported to police on 09.07.2023 with

the delay of 13 days. The delay in criminal cases, particularly when it is unexplained, is always presumed to be fatal for the prosecution. In the present case, it appears that in the F.I.R. and challan prosecution has applied Section 489-F.P.C., which does not fall within the prohibitory clause of section 497 Cr. P.C. On the subject issue, the Supreme Court has already decided the legal issue of the subject matter in the cases of Riaz Jafar Natiq Vs. Muhammad Nadeem Dar and others (2011 SCMR 1708), Abdul Hafeez vs. The State [2016 SCMR 1439], Dr. Abdul Rauf Vs. The State [2020 SCMR 1258] and Muhammad Ramzan vs. State [2020 SCMR 717], thus no further deliberation is required on the part of this Court.

7. The statute for the offense under section 489-F, P.P.C. is three years and the same also does not fall within the prohibitory clause of section 497, Cr. P.C. It is settled law that grant of bail in the offenses not falling within the prohibitory clause is a rule and refusal is an exception. On the aforesaid proposition, I am guided by the decision rendered by the Supreme Court in the case of Muhammad Sarfaraz vs. The State 2014 SCMR 1032 wherein bail was granted for the offense under section 489-F PPC and in the case of Saeed Ahmed vs. The State 1995 SCMR 170 wherein concession of bail was extended to the accused based on documentary evidence.

8. Prima facie, the complainant had tried to convert a civil dispute into a criminal case as per the agreement cited supra; and the learned trial Court has to evaluate the same judiciously, independently, whether the relevant offense is attracted or otherwise based on the plea of the complainant. Even otherwise, it has already been clarified by the Supreme Court in the cases of Shahid Imran v The State and others 2011 SCMR 1614 and Rafiq Haji Usman v 5 Chairman, NAB and another 2015 SCMR 1575 that the offenses are attracted only in a case of entrustment of property and not in a case of investment or payment of money.

9. At this stage it is important to note that Section 489-F of PPC is not a provision that is intended by the Legislature to be used for recovery of an alleged amount through the present proceedings. 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 PPC. On the other hand, for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of CPC. The Supreme Court has held in the recent judgment that commercial integrity is an ethical standard that would require evidence for establishing, its absence in the conduct of an accused to a degree that constitutes dishonesty by him within the meaning of section 489-F, P.P.C.

10. In view of the above, this bail application is accepted and the applicant is admitted to bail provided he furnishes solvent surety to the tune of Rs.1,00,000/- (Rupees one lac) with P.R bond in the like amount to the satisfaction of the learned trial.

11. All the observations made hereinabove are tentative and shall have no bearing on the final determination of guilt or innocence by the trial Court.

JUDGE