

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

Criminal Bail Application No. 1762 of 2023

Date	Order with signature of Judge
------	-------------------------------

For hearing of bail application

28.9.2023

Mr. Fakir Ghazi Darban Hisbani advocate for the applicant alongwith applicant Rao Tanveer Ahmed

Ms. Aisha Saeed, ADPP alongwith IO/SI Rizwan Rasheed PS Docks, Karachi

Mr. Muhammad Riaz advocate for the complainant alongwith complainant Umar Farooq

Mr. Asif Khan, Manager Operation MCB Nayaabad Branch Karachi

Through this bail application under Section 498 Cr.P.C., the applicant Rao Tanveer Ahmed has sought admission to pre-arrest bail in F.I.R No. 186/2023, registered under Section 489-F PPC at Police Station Docks Karachi.

2. The charge against the applicant as per contents of the FIR lodged by the complainant is that the applicant/accused issued 15 cheques amounting to Rs.26,20,000/- in favor of the complainant in connection with the fish business transaction which was deposited by him in his account at the Bank Al-Falah Fishri Branch but the same was dishonored with the reason of insufficient funds. Such a report of the incident was given to Police Station Docks on 18.04.2023, which registered F.I.R No.186/2023, under Section 489-F PPC. The earlier bail plea of the applicant was declined by the learned VI-Additional District & Sessions Judge (West) Karachi vide order dated 27.06.2023 in Criminal Bail Application No.2097/2023.

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. Learned counsel submits that there is a delay of more than 28 days in lodging the FIR without explanation; that there is no private witness cited in the FIR by the complainant and the matter is purely blackmailing, that the alleged offense does not fall within the ambit of prohibitory clause of Section 497 Cr. P.C. He lastly prayed for allowing the bail application.

4. Ms. Aisha Saeed, learned ADPP assisted by learned counsel for the complainant has opposed the application and states that the learned trial Court has rightly dismissed the bail plea of the applicant and that the applicant does not deserve the concession of pre-arrest bail. He added that

the accusation against the applicant is well founded, and the prayer of the applicant for the grant of pre-arrest bail is liable to be dismissed. Per learned counsel for the complainant, 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 counsel 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 on behalf of the applicant/accused the post-dated cheque leaf was issued but the same was dishonored, and when he knew that, he made no arrangements for encashment of the cheque just to cause wrongful gain to himself and wrongful loss to the complainant thus section 489-F PPC is fully applicable in this case; that the cheque leaf was not issued without consideration as per Section 118 of the Negotiable Instruments Act. 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 the FIR, and 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 vide order dated 27.06.2023. 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. To prove the charge against an accused under Section 489-F, P.P.C. all the ingredients of section 489-F, P.P.C. must be proved through cogent evidence and beyond any shadow of a doubt, however, in this case, the complainant claims that he made a fish business transaction with the applicant for an amount of Rs.26,20,000/- and in this regard the applicant issued cheques of the aforesaid amount and the applicant has pleaded that the subject cheques were stolen from his business place. It is for the trial Court to consider that under what circumstances, the cheque(s) was/were issued and what was the intention of the person, issuing it. Prima facie, the mere issuance of a cheque(s) and its being dishonored by itself, is not an offense, unless and until dishonesty on the part of a payer is proved. Provisions of Section 489-F, P.P.C. will only be attracted if the following essential ingredients are fulfilled and proved by the prosecution:-

- (i) *issuance of the cheque;*
- (ii) *such issuance was with dishonest intention;*
- (iii) *the purpose of issuance of cheques should be:-*
 - (a) *to repay a loan; or*
 - (b) *to fulfill an obligation (which in wide term inter-alia applicable to lawful agreements, contracts, services, promises by which one is bound or an act which binds a person to some performance).*
- (iv) *on presentation, the cheques are dishonored. However, a valid defense can be taken by the accused, if he proves that;-*
 - (i) *he had made arrangements with his bank to ensure that the cheques would be honored; and*
 - (ii) *that the bank was at fault in dishonoring the cheque.*

7. The controversy between the parties seems to be of a civil nature as per narration made by the complainant in the FIR, however, the law on the aforesaid subject is now settled and the maximum relief for the complainant of the case is the conviction of the responsible person and punishment as a result thereof, which may extend to 3 years or with a fine or with both. It is also settled now that the cheque amount involved in the offense under such Section is never considered stolen property. Had this been treated as stolen property, the Investigating Agency would certainly have been equipped with the power to recover the amount also as is provided in Chapter XVII of P.P.C. relating to offenses against property. The offense under Section 489-F, P.P.C. is not made out on the part of the said Chapter providing the offenses and punishments of offenses against property, rather in fact the same has been inserted in Chapter XVIII of P.P.C., regarding offenses relating to documents and to trade of property marks.

8. When on 25-10-2002, Section 489-F, P.P.C. was inserted in P.P.C., Order XXXVII, C.P.C. was already a part of the statute book providing the mode of recovery of the amounts on the subject matter of negotiable instruments, and a complete trial is available for the person interested in the recovery of the amounts of a dishonored cheque, therefore, not only that the complainant in a criminal case under Section 489-F, P.P.C. cannot ask a Criminal Court to effect any recovery of the amount involved in the cheque, but also the amount whatsoever high it is, would not increase the volume and gravity of the offense. The maximum punishment provided for such an offense cannot exceed 3 years. Even this conviction of 3 years is not an exclusive punishment. By using the word "or" falling in between the substantive sentence and the imposition of the fine, the Legislature has provided the punishment of a fine as an independent conviction, and this type of legislation brings a case of such nature outside

the scope of Prohibitory Clause of Section 497, Cr.P.C. The possibility cannot be ruled out and it would remain within the jurisdiction of the trial Court that ultimately the sentence of fine independently is imposed and in such eventuality, nobody would be in a position to compensate the accused for the period he has spent in incarceration during the trial of an offense under Section 489-F, P.P.C.

9. The allegation against the applicant is that he issued 15 cheques amounting to Rs.26,20,000/- to the complainant, which on presentation were dishonored, though, the applicant attempted to stop the payment by applying to the bank, however, the bank official refused to entertain the application on the premise that no funds in his account were available and subsequently closed his account, however, the complainant succeeded to register a criminal case under Section 489-F P.P.C. against the applicant on the aforesaid analogy. The complainant has not described the alleged business, as to how, when, and by what process the subject transaction exchanged between the parties. These factual aspects of the matter will be determined by the learned trial Court at the time of recording of the evidence. The case against Applicant is based on documentary evidence, which is yet to be determined by the learned Trial Court. That being so, one of the foundational elements of Section 489-F, P.P.C. as discussed supra is prima facie missing. The invocation of penal provision would therefore remain a moot point. The ground that prosecution is motivated by malice may not in these circumstances be ill-founded. On the aforesaid proposition, I am fortified by the decision rendered by the Supreme Court in the case of *Muhammad Sarfraz vs. The State* (2014 SCMR 1032) wherein bail was granted for the offense under Section 489-F P.P.C and in the case of *Saeed Ahmed vs. the state* (1995 SCMR 170) wherein concession of bail was extended to accused based on documentary evidence.

10. I have experienced that in almost every case, where an accused applies for the concession of bail in the case under Section 489-F, P.P.C., it is often opposed on the ground that a huge amount is involved and it is yet to be recovered. No such process can be allowed to be adopted either by the Courts dealing with the matter of trial of the offense under Section 489-F, P.P.C. or the Investigating Agency to effect recovery. In business circles, the issuance of cheques for security purposes or as a guarantee is a practice of routine, but this practice is being misused by the mischief-mongers in the business community and the cheques, which were simply issued as surety or guarantee are subsequently used as a lever to exert pressure to gain the unjustified demand of the person in possession of said cheque and then by use of the investigating machinery, the issue of the

cheque is often forced to surrender to their illegal demands and in the said manner, the provisions of this Section of the law is being misused. Securing the money in such a manner prima facie, would be termed a pressure tactic.

11. Primarily, in bail matters, it is the discretion of every Court to grant the bail, but such discretion should not be arbitrary, fanciful, or perverse, as the case in hand begs a question as to what constitutes an offense under Section 489-F, P.P.C. Every transaction where a cheque is dishonored may not constitute an offense. The foundational elements to constitute an offense under this provision or the issuance of a cheque with dishonest intent, the cheque should be towards repayment of a loan or fulfillment of an obligation, and that the cheque in question is dishonored.

12. In the instant case, prima facie, the circumstances indicate that the cheques in question were issued to the complainant on different dates i.e. 21.2.2023 and onwards, however, he lodged the FIR No. 186/2023, registered under Section 489-F PPC at Police Station Docks Karachi, on 18.04.2023 i.e. after the delay of more than one month and prima facie no explanation has been given for such delay as the foundational elements to constitute an offense under Section 489-F PPC as discussed supra is clear in its terms.

13. In view of what has been discussed above, and keeping in view the dicta laid down by the Supreme Court in the aforesaid cases, this Court is of the tentative view that the applicant has been attending the trial Court and the matter is to be concluded within the reasonable time, however, the trial Court is taking pains to procure the attendance of the complainant to adduce evidence, therefore, the interim bail granted to the applicant vide order dated 11.8.2023 is hereby confirmed subject to furnishing his additional surety in the sum of Rs.500,000/- (Five lacs) and P.R bond in the like amount to the satisfaction of the Nazir of this Court. However, the learned trial Court is directed to conclude the trial of the case by examining the witness within two months after receipt of this order.

JUDGE