

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

Criminal Bail Application No.1363 of 2023
(Atiq-ur-Rehman V/ The State)

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

For hearing of bail application

14.7.2023

Mr. Imtiaz Ali, advocate for the applicant.
Mr. Ajaz Muhammad Bangesh, advocate for the complainant.
Mr. Siraj Ali Khan, Addl. P.G Sindh.

Through this bail application, the applicant Atiq-ur-Rehman son Of Noshad Khan seeks post-arrest bail in Crime No.280/2023, registered under Section 489-F PPC at PS SSHIA Malir, Karachi. Applicant's earlier filed Bail Application bearing No.2512/2023, which was dismissed by the learned Additional Sessions Judge-VI Malir Karachi vide order dated 14.06.2023, hence this bail application.

2. It is, inter-alia, contended that the applicant has been hooked under Section 489-F PPC by the complainant on the premise that he has been cheated by the applicant by issuing a cheque of Rs.11,00,000 dated 10.12.2022, which on presentation was dishonored. Learned counsel emphasized that the story so narrated by the complainant is managed one as the alleged offense took place on 15.12.2022, whereas, the complainant approached the police on 09.03.2023 with a delay of three months without lawful explanation. Per learned counsel, the matter between the parties is of civil nature which has been converted into a criminal offence. He next argued that the complainant has failed to produce any agreement to receive such amount of Rs.11,00,000/- from the applicant rather he has managed the signature of the applicant on the purported cheque dated 10.12.2022 though he was well aware of the factum that the applicant used to purchase household materials on retail basis from the complainant and there was understanding between them, however, he managed the signature of the applicant on the alleged cheque, which was of cash amount and in the name of complainant, which was purportedly kept by the complainant without lawful authority and subsequently produced before the bank officials to get it bounced to rope the applicant in the aforesaid crime to recover the alleged amount from the applicant. Learned counsel further submitted that there is no evidence on the record to the effect that

in whose presence the alleged cheque was given to the complainant as surety and not the fulfillment of any obligation or repayment of the loan as portrayed by the complainant; that the complainant with mala fide intention has fabricated a story of his own to attract Section 489-F PPC though this section is not applicable in the present circumstances of the case more particularly the cheque was of cash amount and not in the name of complainant; that the alleged offense under Section 489-F does not fall within the prohibition contained in Section 497(i) Cr. P.C therefore, the case against the applicant requires further inquiry; that the entire case of the prosecution depends upon the documentary evidence which is available to the prosecution, therefore, there is no question of tempering with the same. It is further contended that the basic ingredients of section 489-F are missing, therefore, applicant cannot be saddled with criminal liability. He lastly prayed for a grant of bail to the applicant in the aforesaid crime.

3. On the contrary, learned APG assisted by learned counsel for the complainant has contended that the applicant has committed the serious offense of fraud and cheating with the complainant by issuing a bogus cheque which was subsequently on deposit bounced on account of insufficient funds in his bank account; that due to illegal and Fraudulent act on the part of the applicant, the complainant has suffered set back in the business, therefore, he is not entitled to the concession of bail: that the applicant has admitted to having delivered the cheque of the said amount to complainant, therefore, his admission is sufficient to attract the ingredients of the offence under Section 489-F PPC as such no concession of bail may be given to the applicant. He lastly submitted that the applicant is involved by issuing different cheques of different amounts which are lying with the complainant and there is the likelihood that the aforesaid cheques may be dishonored on presentation in the bank. In support of his contentions, he relied upon the case of Syed Amir Jalali v The State and another (2013 YLR 626) and prayed for dismissal of the instant bail application.

3. I have heard the learned counsel for the applicant learned APG for the state and learned counsel for the complainant and perused the material available on record as well as case law cited at the bar.

4. I am conscious of the fact that while deciding the bail application this Court has to make a tentative assessment of the record which in this case is reflecting the following aspects:-

- i) The alleged offense took place on 15.12.2022 and was reported to police on 09.03.2023 with a delay of three months.*
- ii) The complainant has admitted that there is a business transaction between the applicant and the complainant and the complainant admitted that the applicant received household goods/grocery items on credit.*
- iii) The applicant was arrested on 17.05.2023.*
- iv) The cheque return memo shows the reasons for insufficient funds in the drawer's account vide memo dated 15.12.2022.*
- v) Cheque No.154930074 dated 10.12.2022 shows that this was a cash cheque and not in the name of the complainant.*
- vi) The charge sheet has been submitted and the applicant is no more required for investigation.*
- vii) The alleged offence is punishable up to three years.*

6. I have noted that the applicant is charged with an offense punishable under Section 489-F PPC maximum sentence in which is three years imprisonment thus the same does not fall within the prohibitory clause of Section 497 Cr.P.C. Prima facie, the I.O has failed to look into the memo of the alleged cheque which is of cash and not in the name of the complainant. These factual aspects of *the matter will* be determined by the trial Court at the time of the recording of the evidence. The record further reflects that the applicant moved an application to the SHO Gulshan-e-Maymar Karachi to the factum that he is a poor person and his check book has been retained by the complainant without lawful justification and action may be taken against him. The case against the applicant is based on documentary evidence which is yet to be determined by the trial Court. I am also guided by the decision rendered by the Supreme Court in the case of Muhammad Sarfraz v. The State (2014 SCMR 1032), wherein bail was granted for the offense under Section 489-F PPC, and in the case of Saeed Ahmed v. the State (1995 SCMR 1701), wherein concession of bail was extended to the accused on the basis of documentary evidence.

7. In view of the tentative assessment of the record coupled with the factum that the alleged cheque is of cash and not in the name of the complainant, therefore, the case of the applicant requires further inquiry as provided under Section 497 (2) Cr.P.C.

8. The applicant has made out a case of post-arrest bail at this stage. Accordingly, the applicant is admitted to bail in the aforesaid crime

subject to furnishing solvent surety in the sum of Rs.50.000) and PR bond in the like amount to the satisfaction of the trial Court.

9. The above findings are tentative which shall not prejudice the case of either party during trial.

10. This bail application stands disposed of in the above terms.

JUDGE

Shahzad