

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.242 of 2025

Applicant : Sajjad Ali son of Khair Muhammad
through Mr. Gul Muhammad, Advocate

Respondent : The State
Ms. Rubina Qadiq, A.P.G.

Date of hearing : 25.03.2025

Date of order : 25.03.2025

ORDER

KHALID HUSSAIN SHAHANI, J -- The applicant/accused has filed this bail application seeking pre-arrest bail in Crime No.156/2024, registered under Sections 420 and 489-F of the Pakistan Penal Code at Police Station Gharo. His prior request for bail was declined by the Special Judge Anti-Rape/Sessions Judge, Thatta, through an order dated 15.11.2024.

2. The prosecution's case is that the complainant, serving as the Branch Manager at Micro Finance Gharo, provided loans to individuals on easy installments and appointed the applicant for loan recovery. Later, it came to the complainant's knowledge that an amount of Rs.513,000/- recovered by the applicant was not deposited in the bank. Upon further inquiry, it was revealed that the applicant had collected the said amount but failed to deposit it. A show cause notice was issued to the applicant, who subsequently appeared before the Bank Manager, admitted to have used the funds, and in lieu thereof issued a post-dated cheque. However, the cheque was dishonored upon presentation, leading to the registration of the FIR.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated. No borrower has testified that any money was received by the applicant. It is solely the complainant's assertion that the applicant collected funds from borrowers. Moreover, the cheque in question was allegedly issued as a guarantee at the time the applicant was assigned recovery duties, rather than in settlement of any actual liability.

4. Conversely, the learned Additional Prosecutor General strongly opposed the bail plea, arguing that the prosecution has recorded the statements of two witnesses. However, he conceded that no borrower

from the concerned bank has come forward to confirm that the applicant received any money.

5. The applicant is accused of having received an amount of Rs.513,000/- from borrowers of Micro Finance. When the learned Additional Prosecutor General was asked to provide names of individuals from whom this amount was allegedly collected, he, after reviewing the case file, confirmed that no such individuals have come forward to support the prosecution's version that the applicant received or misappropriated any funds. This supports the applicant's counsel's argument that the cheque in question was provided to the bank manager purely as a guarantee or security, rather than as payment for any outstanding obligation. Moreover, the FIR was registered after an unexplained delay of nine months. The Hon'ble Supreme Court's observations in *Bashir Ahmed v. The State & another* (2023 SCMR 748) are relevant and are quoted below:

"Then there is inordinate delay, which has not been explained, in registering the FIR. And, as yet no proof has been tendered to show that the amount of two million and two hundred thousand rupees was paid to the petitioner by the complainant. There is also no evidence, at this stage, with regard to the stated ingredients of Section 489-F of the Code, which may bring it within the ambit of mala fide on the part of the complainant. In the circumstances, this also makes it a case of further inquiry."

6. The offence under Section 489-F PPC does not fall within the prohibitory clause of Section 497(1) Cr.P.C., and the circumstances of the case bring it within the scope of further inquiry. It is also a well-established principle of law that in cases not covered under the prohibitory clause, the grant of bail is a rule while its refusal is an exception.

7. In view of the foregoing discussion, the applicant has successfully made out a case for the grant of bail. Consequently, this bail application is allowed, and the interim pre-arrest bail earlier granted to the applicant by order dated 28.01.2025 is hereby confirmed on the same terms and conditions with the directions to the applicant to join investigation / trial.

JUDGE

Shahbaz/PA