

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Bail. Application No. 571 of 2025

Applicant : Asif Ali son of Hashmat Ali
through Mr. Naveed Ali Abro, Advocate

Respondent : The State
Ms. Rubina Qadir, Addl. P. G. Sindh.
Assisted by Mr. Rao Gul Hassan advocate for
complainant.

Date of hearing : 28.03.2025.

Date of order : 28.03.2025.

ORDER

KHALID HUSSAIN SHAHANI, J -- Through instant bail application, applicant Asif Ali son of Hashmat Ali seeks post arrest bail in case bearing crime No. 1504/2024 offence u/s 489-F PPC of PS KIA, Karachi. Previous bail of the applicant was declined by the learned Judicial Magistrate IX Karachi East vide order dated 06.02.2025 and learned Additional Sessions Judge-XI Karachi East vide order dated 24.02.2025.

2. As per prosecution theory, on December 11, 2023, the complainant sold fabric on credit to applicant for PKR 3,350,000/-. He issued multiple post-dated cheque leaves from different banks. Three cheque leaves, details thereof mentioned in the FIR were presented for encashment, out of those, two were returned due to insufficient funds, one declared illegal by the bank and 08 cheque leaves were also dishonored on presentation. Consequent upon; case was registered inter-alia on above facts.

3. Learned counsel contends, the applicant is innocent and has falsely been implicated by the complainant in this case; the applicant had filed Crl. Misc. Application No.4956/2024 under Section 22-A Cr.P.C., which was dismissed as withdrawn on 24.12.2024, as the case was registered on 19.12.2024; two cheque leaves bearing No.00000047 and 00000063 amounting Rs.500,000/- and 200,000/- respectively were not in the name of the applicant; the applicant has make payment on different occasions through digital transaction amounting to Rs.450,000/-; there is 10 months delay in lodging of FIR without plausible explanation; the case does not fall within the ambit of prohibitory clause; the case has already been challaned and the applicant is no longer required for the investigation.

4. Conversely, learned APG for the State duly assisted by learned counsel for the Complainant record objections mainly contending that the

applicant dishonestly cheated the complainant and usurped a significant amount, and the cheque leaves were given in an obligation, knowing that no sufficient amount was available for encashment. He also placed on record a USB, said to contain threats issued by the applicant and prayed, the applicant is not entitled for the relief sought.

5. It is admitted that the parties maintained a business relationship involving substantial monetary transactions through banking channels. According to the applicant's counsel, the cheques were issued merely as a security in respect of fabrics. To establish an offence under Section 489-F PPC, it must be shown that the cheque was issued with dishonest intent, for repayment of a loan or fulfillment of an obligation, and that it was subsequently dishonored. In the present case, there is sufficient record of financial dealings and transactions between the parties. It remains a matter for trial to determine whether the cheques were issued as a binding obligation or purely as security. Reliance is placed on the precedents of *Mian Allah Ditta v. The State and others* (2013 SCMR 51), *Mian Muhammad Akram v. The State and others* (2014 SCMR 1369), and *Muhammad Iqbal v. The State and another* (2018 YLR Note 157).

6. The applicant is currently in custody, and the investigation in the present case has been completed. The applicant is no longer required by the police for investigative purposes. Furthermore, the offence does not fall within the prohibitory clause of Section 497(1) Cr.P.C, as the maximum sentence under Section 489-F P.P.C is three years. In such like cases, the grant of bail is the general rule, while refusal is an exception, as established in the case of Riaz Jafar Natiq (2011 SCMR 1708) that:

"Thus keeping in view the law laid down in the case of Zafar Iqbal v. Muhammad Anwar and others (2009 SCMR 1488) ordaining that where a case falls within non- prohibitory clause the concession of granting bail must be favourably considered and should only be declined in exceptional cases. We do not find this to be a case where it should be refused as an exception. Thus, this petition is converted into appeal and the same is allowed."

7. I have carefully considered the contentions raised by counsel for both parties and have gone through the case laws relied upon. Criminal culpability of the applicant regarding dishonestly issuing cheque would be determined during trial. Accordingly, the facts reported in the case of *Abdul Saboor v. the State through A.G. Khyber Pakhtunkhwa and another* (2022 SCMR 592), being relevant to the above case in hand are referred as under: -

“As per the contents of the crime report, the petitioner was running a business of poultry; he borrowed some amount from the complainant and to settle the same, he issued the cheque in question to the complainant, which has been dishonored. It is an admitted position that the petitioner is behind the bars for the last six and half months whereas the maximum punishment provided under the statute for the offence under section 489- F, P.P.C. is three years and the offence does not fall within the prohibitory clause of section 497, Cr.P.C. It is settled law that grant of bail in the offences not falling within the prohibitory clause is a rule and refusal is an exception. This Court in Muhammad Tanveer v. The State and another (PLD 2017 SC 733) has held that "once this Court has held in categorical terms that grant of bail in offences not falling within the prohibitory limb of section 497, Cr.P.C. shall be a rule and refusal shall be an exception then the Courts of the country should follow this principle in its letter and spirit because principles of law enunciated by this Court are constitutionally binding on all Courts throughout the country including the Special Tribunals and Special Courts." Prima facie section 489-F of P.P.C. is not a provision which is intended by the Legislature to be used for recovery of an alleged amount. 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, P.P.C. On the other hand, for recovery of any amount, civil proceedings provide remedies, inter alia, under Order XXXVII of C.P.C. At this stage, only a tentative assessment of the matter is required and we cannot presume dishonesty on the part of the petitioner as any such determination would prejudice his right to a fair trial guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. Liberty of a person is a precious right which cannot be taken away without exceptional foundations. The law is very liberal especially when it is salutary principle of law that the offences which do not fall within the prohibitory clause, the grant of bail is a rule while its refusal is mere an exception.”

8. Given in the above, the applicant has succeeded to make out case for further inquiry as envisaged under Section 497(ii) Cr.P.C. Accordingly, the instant bail application is allowed and resultantly, the applicant is directed to be released on bail, subject to furnishing solvent surety in sum of Rs.500,000/- (Rupees five lacs only) and P.R. bond in the like amount to the satisfaction of the trial Court.

9. The observations made herein are tentative in nature and shall not prejudice the trial court in deciding the matter on merits.

JUDGE