IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 700 of 2025

Applicant	:	Sardar Iftikhar Ahmed son of Sardar Munsif Khan Through Syed Aamir Ali Bukhari, Advocate
Respondent	:	Complainant (in person) The State through Ms. Seema Zaidi, Addl. P.G.
Date of hearing	:	09.04.2025
Date of order	:	15.04.2025

O R D E R

KHALID HUSSAIN SHAHANI, J. – The applicant seeks pre-arrest bail in a case bearing crime No. 149/2025, offence u/s 489-F/506 PPC of P.S Gaddap City Karachi. The pre-arrest bail plea of the applicant was earlier declined by the learned Additional Sessions Judge-I, Malir Karachi , vide order dated 14.03.2025.

2. The facts led to registration of case by the complainant are that in January 2021, he was induced by Sardar Iftikhar Ahmad (applicant) and others, to invest Rs. 7.5 Crores in a purported partnership for commercial plots in Bahria Town Karachi. The complainant claims to have paid the amount through bank transfer, plot files, and cash. Later, he discovered that the plots did not belong to the accused, and upon confrontation, an agreement was executed on 18.01.2023 for return of the amount within four months. As part of that understanding, the accused allegedly issued a cheque of Rs.5 Lacs, which was dishonored. The complainant further alleges that, upon demand for repayment, the accused failed to return the balance amount of Rs.4.2 Crores and threatened him. Consequent upon; case was registered inter-alia on above facts in pursuance of the directions accorded by the Ex-Officio Justice of Peace on an application under Section 22-A Cr.P.C.

3. Learned counsel contends, the applicant is innocent and has been falsely implicated in the case, which arises out of a purely civil transaction. The FIR was lodged after an unexplained and inordinate delay of over eight months, raising serious doubts about its veracity and pointing toward malafide on the part of the complainant. It is submitted that the cheque in question was not issued with dishonest intent but merely as a gesture of goodwill or assurance in the course of an ongoing business relationship,

which is also subject to civil litigation pending before competent forums. Learned counsel further argues that the amount mentioned in the bounced cheque has already been paid, and payment receipts bearing the complainant's signatures have been produced, although the same were not appreciated by the learned court below. The case, therefore, calls for further inquiry as to the purpose and intention behind the issuance of the cheque, a matter that can only be resolved after recording of evidence. It is urged that Section 489-F PPC has often been misused as a tool to pressurize parties in civil disputes, and that the offence does not fall within the prohibitory clause of Section 497 Cr.P.C. Therefore, the applicant is entitled to the concession of pre-arrest bail. Reliance is placed on various judgments of the Hon'ble Supreme Court, including *2023 SCMR 2122*, *2022 SCMR 592*, and *2022 SCMR 737*, where it has been consistently held that in offences not falling within the prohibitory clause, bail is a rule and refusal an exception. The courts have further emphasized that mere issuance and dishonor of a cheque is not sufficient to attract Section 489-F PPC unless it is shown that the cheque was issued with dishonest intent to cause wrongful gain or loss. It is also pointed out that the offence under Section 506 PPC, also mentioned in the FIR, is bailable. Moreover, the applicant has no prior criminal record and enjoys a good reputation. The learned trial court, while dismissing the earlier bail application, failed to apply judicial mind to the facts and documents placed on record, particularly the payment vouchers and receipts. Learned counsel for applicant relied upon the case laws cited at 2012 SCMR 51, 2023 SCMR 1948, 2022 SCMR 592, 2023 SCMR 2122, PLD 2012 Sindh 464, 2006 YLR Lahore 406, 2021 P.Cr.L.J 586 Baluchistan and 2018 P.Cr.L.J Note 190 Peshawar. He also produced the unreported order of High Court of Sindh vide Cr. Bail Application NO. 1623 of 2023, reported judgment of 2023 SCMR 1567.

4. Conversely, the learned APG duly assisted by the complainant vehemently opposed the grant of bail to the applicant/accused. It was contended that the cheque in question was issued by the accused with *mens rea* and malafide intent, inasmuch as he was under a binding legal obligation to refund an outstanding liability amounting to Rs. 4.2 Crores, pursuant to a written agreement executed between the parties. It was further argued that the name of accused Sardar Iftikhar finds specific mention in the present F.I.R., and that he is directly responsible for the financial loss suffered by the complainant. The complainant further submitted that he has already instituted two criminal proceedings in

respect of the fraudulent conduct of the accused i.e. the present FIR and earlier F.I.R. No. 513/2024. He categorically stated that the entire investment was made by him through verifiable banking channels and in the form of valuable property interests. It was further alleged by the complainant that the accused persons deliberately misrepresented their ownership and control over two commercial plots, viz. Plot Nos. 36 and 37, Jinnah Commercial Site-A, Bahria Town Karachi, and induced the complainant to invest substantial sums on the false assurance of profit-sharing and ownership rights. Upon due verification, the said plots were found not to be registered in the names of the accused, which, according to the complainant, clearly constitutes a calculated act of deception and criminal breach of trust. He further submitted that the conduct of the accused is not isolated but part of a continued pattern of fraudulent dealings. It was emphasized that the present occurrence is in continuation of a prior course of dishonest conduct, thereby warranting serious consideration at the bail stage. It was also alleged that the accused has made it a practice to defraud members of the public under the guise of property investment and construction partnerships. In support of his contentions, the complainant placed reliance upon a catena of judgments of the superior courts, including but not limited to 2023 SCMR 1, 2024 SCMR 1719, 2023 SCMR 1131, 2021 SCMR 87, 2020 SCMR 1115, 2020 SCMR 249, 2015 SCMR 1394, 2009 SCMR 174, 2009 SCMR 1488, PLD 2011 Lahore 306, PLD 2006 Lahore 302, PLD 2005 Karachi 631, PLD 2005 Karachi 43, 2007 YLR 3034, 2011 YLR 863, 2012 YLR 674, 2005 P.Cr.L.J 654, 2008 MLD 1030, 1999 P.Cr.L.J 1074, 1996 P.Cr.L.J 2006, 2002 P.Cr.L.J 941, 2007 P.Cr.L.J 78, 2015 P.Cr.L.J 1473, 2000 MLD 1718, and PLJ 2024 SC (Cr.C) 31. Relying on these precedents, it was argued that the conduct of the accused falls squarely within the mischief of Section 489-F PPC and related penal provisions, and that his dishonest intention is evident from the record, thereby disentitling him to the concession of bail.

5. Perusal of the record reveals that the cheque in question was not issued by the applicant in his personal capacity but was issued by the entity “SA Builders & Developers”. It would require determination at the stage of full-fledged trial, whether the said company is owned or proprietary of the applicant or otherwise. Furthermore, it is also a matter of record that the agreement relied upon by the complainant is not between the complainant and the present applicant, but rather between one Mr. Sharyar and the applicant, purportedly regarding their own internal business arrangement. More so, the prime agreement appended by the

complainant with his Cr. Misc. Application i.e. the partnership deed is shown to be between Irfan, Rana Muhammad Shaharyar, and the complainant. The name of the present applicant/accused is not mentioned anywhere in such partnership deed. This creates serious doubt about the business liability being attributed to the applicant in relation to the complainant. Even otherwise, the applicant has produced documentation showing that he had paid Rs.95,00,000/- (Ninety-Five Lacs), and has frankly conceded that Rs.15,00,000/- remains due, which he is ready and willing to pay on behalf of co-accused Rana Muhammad Sheharyar . This conduct shows a bona fide gesture and rebuttal to any dishonest intention. It is also an admitted position that earlier, FIR No. 513/2024 was lodged by the same complainant against the present applicant in respect of alleged financial dealings. In that case, the applicant was granted bail. Per the report of the Investigating Officer, the present applicant was, at most, found liable under Section 420 PPC in that matter. The registration of the second FIR, which again pertains to the same set of financial dealings, is a clear manifestation of malafide on the part of the complainant, aimed at exerting undue pressure by involving the applicant in multiple criminal cases.

6. The practice of lodging successive FIRs in respect of dishonoured cheques arising out of the same business transaction has been strongly deprecated by this Court in the case of **Sheikh Rehan Ahmed v. Judicial Magistrate-II, South, Karachi & others** reported as **2019 MLD 636**, wherein it was held:

> *"It becomes a regular practice that multiple post-dated cheques are obtained regarding some monetary obligations and after getting the same dishonoured by depositing in different bank branches, criminal cases are initiated one after another... the person who has issued the cheques is forced to enter into compromise on the conditions, which are sometimes unbearable for him... the practice of using the provision of Section 489-F by some of the businessmen as the tool of recovery should be put an end. If it is proved that at the time of lodging of earlier FIR, the complainant was already having a bounced cheque of the same party and he avoided to lodge FIR with intention to use it at some future stage as a tool of recovery, then subsequent FIR should not be allowed and if the subsequent FIR is lodged then it is the duty of the concerned Judicial Magistrate to nip the evil in the bud by using the provision of Section 63, Cr.PC."*

7. In the present case, the complainant was admittedly in possession of the bounced cheque at the time of lodging of FIR No. 513/2024, yet deliberately chose not to include the same, which reflects ulterior motives

behind filing of the subsequent FIR. The cheque in question appears to have been used as a *tool of coercion* to pressurize the applicant into fulfilling allegedly inflated or unrelated liabilities.

8. Section 489-F PPC provides:
"Whoever dishonestly issues a cheque towards repayment of a loan or fulfillment of an obligation which is dishonoured on presentation, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

The essential ingredients of Section 489-F PPC are:
(i) issuance of cheque;
(ii) the cheque must be towards repayment of a loan or discharge of obligation;
(iii) dishonour of the cheque;
(iv) the issuance must be dishonest.

9. In the instant case, the above ingredients are not prima facie satisfied. There is serious doubt regarding the *obligation* as no direct agreement is shown to exist between the complainant and the applicant. Rather, the agreement and the cheque pertain to business dealings among other individuals or entities. Moreover, the question whether the cheque was issued *dishonestly* cannot be determined at this stage, especially when partial payments of Rs.95 Lacs have been made and it is not being refuted or controverted by the learned APG for the State or complainant.

10. The maximum punishment for an offence under Section 489-F PPC is **three years**. This sentence is neither capital nor falls within prohibitory clause of Section 497 CrPC. It is well settled that bail cannot be withheld as a means to recover monetary dues. In this respect, reliance may be placed upon the case of **Muhammad Afzal v. The State and others** reported as **2012 YLR 2780**, wherein it was held:

> *"The provisions of section 489-F, P.P.C. have not been promulgated for using it as a tool for recovery of the amounts due in business dealings for which the civil remedy has already been provided by law."*

11. It is frequently noticed that in bail applications under Section 489-F PPC, opposition is raised merely on the ground that large amounts are involved and need to be recovered. However, no such practice can be encouraged by the courts or the investigating agency to misuse the criminal process as an instrument of recovery. The object of criminal law is not to enforce private debts or contracts, but to penalize dishonest acts that attract criminal culpability.

12. In case of Muhammad Anwar Vs. The State & another (2024 SCMR 1657) the Honorable Supreme Court observed,

> *"Primarily, the agreement in question is executed between Petitioner and Muhammad Attique regarding the plot. The perusal of said agreement indicates that the cheque in question was issued as Guarantee from the petitioner to Muhammad Attique. The complainant has failed to produce any receipt issued by the petitioner while receiving cash amount of 2,00,000/-. The tentative assessment of the record shows that it is not toward the fulfillment of any obligation but rather it was given as security. Prima facie, it does not attract the elements of section 489-F, P.P.C.*
> *"8. This Court has held in the case titled Mian Allah Ditta, that every transaction where a cheque is dishonoured may not constitute an offense. The foundational elements to constitute an offense under this provision are the issuance of the cheque with dishonest intent, the cheque should be towards repayment of loan or fulfillment of an obligation, and lastly that the cheque is dishonoured.*
> *9. Furthermore, this Court in the case of Abdul Rasheed, has ruled as follows:*
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> *Even otherwise, even if the complainant wants to recover his money, 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. In view of the above, the question whether the cheques were issued towards repayment of loan or fulfillment of an obligation within the meaning of Section 489-F, P.P.C. is a question, which would be resolved by the learned Trial Court after recording of evidence. The maximum punishment provided under the statute for the offence under Section 489-F, P.P.C. is three years and the same 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."*

13. In case of *Mian Allah Ditta Vs. The State & others* (2013 SCMR 51) the Honorable Supreme Court of Pakistan was pleased to confirm pre-arrest bail to the accused who had issued a cheque that was later dishonored. The Court found that the cheque was given as security in connection with an arbitration agreement, not in repayment of a loan or existing obligation. It held that Section 489-F PPC only applies where a cheque is issued dishonestly to repay a loan or fulfill an obligation, and then dishonored. Since this foundational requirement was prima facie missing, the offence was not made out. The matter appeared to be civil in nature, and criminal proceedings were not justified.

14. In *Abdul Saboor Vs. The State through A.G KPK & another* (2022 SCMR 592), the Honorable Supreme Court observed, the accused Abdul Saboor was charged under Section 489-F of the Pakistan Penal Code for allegedly issuing a dishonoured cheque of Rs. 10 million to settle a business-related debt. He remained in custody for over six and a half months. The Supreme Court held that since the offence did not fall within the prohibitory clause of Section 497 Cr.P.C. and the maximum sentence under Section 489-F PPC was three years, bail should generally be granted rather than refused. The Court emphasized that Section 489-F PPC is not intended to serve as a tool for monetary recovery, which is the

domain of civil litigation under Order XXXVII of the Civil Procedure Code. It reiterated that bail is the rule and refusal an exception in non-prohibitory offences, citing *PLD 2017 SC 733* (Muhammad Tanveer case). Observing that the allegations involved factual controversies to be determined at trial and that further inquiry was warranted under Section 497(2) CrPC, the Court allowed the petition, converted it into an appeal, and granted bail. The judgment reinforced the principle that liberty should not be curtailed without compelling justification, particularly in bailable offences.

15. In case of *Noman Khaliq Vs. The State & another* (2023 SCMR 2122), the Honorable Supreme Court was pleased to considere a case involving a dishonoured cheque arising out of a business relationship. The Court emphasized that Section 489-F PPC is not intended to be used as a mechanism for monetary recovery, particularly where the dispute stems from commercial or business dealings. Instead, civil remedies such as a suit under Order XXXVII of the Code of Civil Procedure are the appropriate avenue for seeking recovery of such amounts. The Court observed that the core issue, whether the cheque was issued towards the repayment of a loan or fulfillment of a legal obligation, could only be determined by the Trial Court after recording of evidence, and as such, the case called for further inquiry under Section 497(2) Cr.P.C. It was further held that since the maximum sentence under Section 489-F PPC is three years, which does not attract the prohibitory clause of Section 497 Cr.P.C., grant of bail is the rule and refusal is an exception. The Court reiterated that absconsion alone is not sufficient to deny bail and does not amount to proof of guilt. In granting bail, the Court relied on its earlier judgment in Abdul Saboor v. The State (2022 SCMR 592), and reaffirmed that criminal prosecution under Section 489-F PPC cannot substitute civil proceedings, especially where the dispute is of a contractual or financial nature arising out of mutual business dealings.

16. In case of *Malik Safdar Ali v. Syed Khalid Ali* (PLD 2012 Sindh 464), this Court examined the essential ingredients required to constitute an offence under Section 489-F PPC, which pertains to the dishonouring of cheques. The Court emphasized that the mere fact of a cheque being dishonoured by a bank is not enough to attract penal liability under this section. It must be established by the prosecution that the cheque was issued in respect of an existing legal obligation or liability, typically arising from a business transaction or financial arrangement. Furthermore, the element of dishonesty and the intention to defraud (mens rea) are indispensable to establish the offence. The Court clarified that if a cheque

is issued only as a security or as a conditional instrument without a present, enforceable liability, its dishonour does not constitute an offence under Section 489-F PPC. In this case, since the prosecution failed to prove the existence of a valid underlying transaction and intent to defraud, the High Court dismissed the appeal against acquittal, holding that the necessary elements of the offence were not satisfied. This judgment reinforces that Section 489-F PPC is not a tool for recovery of money, and its application must be restricted to genuine cases of dishonest issuance of cheques in discharge of real obligations.

17. In case of *Mazhar Iqbal v. The State (*2006 YLR 406 Lahore), the petitioner, sought confirmation of pre-arrest bail in an FIR registered under Section 489-F PPC for allegedly issuing a dishonoured cheque of Rs. 50,000 to the complainant, Zafar Iqbal. The petitioner argued that the cheque was given during the course of mutual business dealings involving second-hand car transactions and that the underlying amount had already been repaid. He further demonstrated good faith by depositing the cheque amount with the police. The Lahore High Court, observed that Section 489-F PPC requires the presence of *mens rea*, i.e., an element of dishonesty, for criminal liability to attach. Mere dishonour of a cheque does not automatically attract penal consequences unless it is proven that the cheque was issued dishonestly or to deceive. Since the payment had already been made, and the cheque was not meant for encashment, the Court found no apparent dishonest intent. Considering that the offence is punishable with a maximum of three years and does not fall within the prohibitory clause of Section 497 Cr.P.C., the Court emphasized that bail in such cases is a rule, while refusal is an exception. The case was considered to involve further inquiry under Section 497(2) Cr.P.C. Accordingly, the petitioner's pre-arrest bail was confirmed, and the Court directed the Magistrate to invest the deposited amount in a government profit scheme, with the eventual entitled party receiving the principal and profits. This case reiterates the principle that criminal liability under Section 489-F PPC requires proof of dishonest intent and is not attracted by mere cheque dishonour in the context of settled business transactions.

18. In case of *Muhammad Ashraf v. The State* (2021 P Cr. L J 586 [Balochistan]), the accused was alleged to have issued a cheque that was dishonoured on presentation. The complainant claimed the cheque had been issued in satisfaction of a financial liability. However, the Court closely examined the legal requirements of Section 489-F PPC and laid down important principles. The Court held that mere dishonouring of a

cheque is not sufficient to constitute an offence under Section 489-F PPC. The prosecution is duty-bound to establish two essential elements:

1. That the cheque was issued in discharge of a legally enforceable obligation, and
2. That it was issued with dishonest intent (mens rea).

This judgment reinforces that Section 489-F PPC is not triggered automatically upon cheque dishonour; the prosecution must prove the context and intent behind the issuance of the cheque. Without evidence of a binding obligation or deceitful conduct, criminal liability does not arise.

19. I have also carefully examined the case law cited by the complainant appearing in person. While I respectfully acknowledge that the cited judgments enunciate sound and well-established legal principles, it is equally evident that the ratio decidendi therein does not squarely apply to the peculiar facts and circumstances of the present case. The factual matrix, legal context, and evidentiary posture in the instant matter are distinguishable, thereby rendering the cited precedents inapposite for determining the present bail application.

20. In case of Rana Muhammad Arshad v. Muhammad Rafique and another (PLD 2009 SC 427) the Honorable Supreme Court was pleased to held in this landmark judgment and outlines the principles governing the grant of pre-arrest bail under Section 498 of the Code of Criminal Procedure, 1898. The Court observed that pre-arrest bail is an extraordinary remedy, which departs from the ordinary course of criminal law wherein an accused is expected to surrender before the process of law and seek bail post-arrest. The judgment recognizes that pre-arrest bail should only be granted in rare and exceptional circumstances, particularly when the accused demonstrates that he is likely to be falsely implicated in a criminal case due to mala fide intentions, such as personal vendetta, enmity, political rivalry, or abuse of authority by the police. The Court emphasized that this relief is not meant to obstruct investigation or hinder the process of justice, but to safeguard an innocent person from abuse of legal process. The Court also made it clear that mere apprehension of arrest or humiliation is not sufficient to invoke the jurisdiction for pre-arrest bail. There must be strong, cogent material suggesting that the complainant or the investigating agency is acting with ulterior motives. Pre-arrest bail is discretionary and can only be granted where mala fide or ulterior motives behind the prosecution are prima facie established, thereby protecting an individual from irreparable injury to dignity, liberty or reputation.

21. In view of the above facts and circumstances, particularly the malafide conduct of complainant by instituting successive FIRs, absence of a direct agreement between complainant and applicant, partial fulfillment of the alleged obligation, and the non-applicability of the prohibitory clause, the applicant has succeeded in making out a case for grant of pre-arrest bail.Consequently, the interim pre-arrest bail already granted to the applicant is hereby confirmed on the same terms and conditions, with the directions to join investigation/trial.

22. Needless to mention, the above observations are tentative in nature and shall have no bearing on the merits of the case, which shall be determined after a full-fledged trial in accordance with law.

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