

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No. 3001/2024

Applicant : Mudassir Gul son of Sohail Gul
Through Mr. Uzair AK Ghouri Advocate

Respondent : The State
through Ms. Seema Zaidi Addl. P.G.

Date of hearing : 08.04.2025

Date of order : 21.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Mudassir Gul seeks pre-arrest bail in a case bearing crime No. 583/2024, offence under Section 489-F PPC of P.S Site-A, Karachi. The bail plea of the applicant was earlier declined by the learned Additional Sessions Judge-XII, Karachi West, vide order dated 23.12.2024.

2. The brief facts of the prosecution's case are that on 14.12.2024, the complainant Syed Shahid Ali, acting as the Assistant Manager of a Steel Trading Company, registered the case under the allegation that the complainant's company entered into a business transaction in 2021 with the applicant being proprietor of M/s S.M. Enterprises, for the supply of steel products. According to the complainant, despite the supply of materials, the requisite payment remained outstanding. Upon repeated demands, the applicant issued three postdated cheque leaves bearing Nos. 11267031, 11267032, and 11267033, each valued at Rs. 2.5 million, drawn on Bank Al-Habib, Water Pump Branch, Karachi. These were presented for encashment at JS Bank, Site Branch, but were dishonored on 18.10.2022. after seeking directions from the Ex-Officio Justice of Peace under Section 22-A Cr.P.C, the case was registered *inter-alia* on the above facts.

3. Learned counsel for the applicant contended that the FIR discloses no specific outstanding amount and that the dispute essentially arises from a civil transaction. He stated that the applicant is a respectable businessman who deals in construction material on a cash basis. The applicant, it is submitted, entered into a "Trader Agreement" dated 12.11.2021 with Amreli Steels, under which he purchased goods by

making advance payments and did not operate any credit account. Counsel emphasized that under the said agreement, an arbitration clause was included, binding both parties to resolve disputes through arbitration. As per the business policy of the supplier, the applicant had issued undated, unsigned cheques as a form of security, which were only to be used in case the credit facility was activated, which, he contends, never occurred. Attention of the Court was also drawn to the pending Civil Suit No. 2144/2022 filed by the applicant before the learned 2nd Senior Civil Judge, Karachi West, seeking resolution of the dispute through arbitration. It was urged that the invoices allegedly relied upon by the complainant are fabricated and no documentary evidence of outstanding dues or acknowledgement of liability exists. The learned counsel further submitted that the impugned cheques were dishonored in October 2022, yet the complainant initiated proceedings under Section 22-A Cr.P.C. only in 2024, leading to the registration of the FIR on 14.12.2024 indicating an unexplained and deliberate delay of over two years, which casts serious doubt over the prosecution's intent and dilutes the credibility of the case. It was argued that the instant FIR is a misuse of criminal process to exert pressure and coerce the applicant into settling what is essentially a civil claim. Learned counsel relied on a catena of judgments including *PLD 2017 SC 733*, *PLD 1995 SC 34*, *PLD 2002 SC 1048*, *2013 SCMR 707*, *2011 SCMR 1119*, and *PLD 2015 SC 137*, in support of the proposition that criminal jurisdiction cannot be invoked to settle civil claims.

4. Conversely, the learned APG, duly assisted by counsel for the complainant, opposed the grant of bail and submitted that the accused is specifically nominated with direct allegations regarding issuance of dishonored cheques. It was submitted that issuance of cheques is not denied and that they were issued in the course of business dealings between the parties. It was contended that the accused had issued the cheques with mala fide intent, knowing they would be dishonored, and thus the offence under Section 489-F PPC is clearly attracted. The learned APG submitted that mere existence of an arbitration clause or pendency of civil proceedings does not preclude criminal liability. Reliance was placed on *2022 MLD 1065* and *2023 YLR Note 33* to support the view that criminal prosecution may be maintained alongside civil remedies. They further argued that the delay in registration of the FIR is not fatal in itself unless mala fide on the part of the complainant is established. which,

according to the prosecution, is not the case here. They lastly prayed for dismissal of bail application.

5. The yardstick of record reveals that the accused and the complainant company entered into a Trader Agreement dated 12.11.2021, under which the accused was to supply undated signed cheques as security, to be used in case of default. The relevant clause of the agreement stipulates that the cheques would be retained and used only if a credit facility was availed by the trader. It is not denied that the cheques were delivered in December 2021, but notably, the copies of the cheques on record do not bear the signature of the accused, nor is there any documentary evidence that the credit facility was ever activated. The complainant asserts default in 2022, yet issued a legal notice only in October 2022 and remained inactive until December 2024, a delay of more than two years. This delay remains unexplained. Though a petition under Section 22-A Cr.P.C. was filed, the inordinate gap in time is not attributable to any pending inquiry or legal embargo that could reasonably prevent earlier registration of the FIR. The long delay, in the absence of cogent explanation, prima facie supports the applicant's stance that the criminal process is being utilized which prima facie shows to pressurize him in a civil dispute.

6. Moreover, the cheques in question were allegedly dishonored in October 2022. Under Section 489-F PPC, for the dishonoring of a cheque to constitute an offence, it must be shown that the cheque was issued dishonestly to discharge a legally enforceable liability. In this case, the cheques appear to be issued as security, and the liability is in dispute. The cheques can also be considered stale by the time of their alleged presentation, which raises further factual questions unsuitable for determination at the bail stage. A security cheque, by definition, is not issued against an immediate debt or payment, but is held as a form of guarantee or collateral in anticipation of a future or contingent liability. Courts have repeatedly held that if a cheque is issued only as a security instrument, it does not meet the requirements of Section 489-F PPC.

7. Further, the agreement incorporates an arbitration clause that obliges both parties to resolve disputes through arbitration. While the existence of an arbitration clause does not oust criminal jurisdiction, its presence along with the admitted initiation of arbitration proceedings by

the accused indicates that there was a genuine business relationship and that the dispute may not be entirely fraudulent or devoid of civil character. The complainant, notably, has not pursued arbitration despite contractual obligation. The legal position is well-settled that the mere issuance of a cheque does not ipso facto attract criminal liability under Section 489-F PPC, particularly where the cheque is issued as security and not towards discharge of an admitted debt. Reference in this regard may be made to *Rana Muhammad Arshad v. The State* (PLD 2017 SC 427), wherein it was held that bail may be granted where the case calls for further inquiry under Section 497(2) Cr.P.C. *There is no cavil with the legal principles enunciated in the case law cited by the learned counsel for the complainant; however, with utmost respect, the same is distinguishable on facts and does not squarely apply to the peculiar circumstances of the present case.*

8. In view of the foregoing, and taking into account the disputed nature of the liability, absence of the accused's signature on the cheques, substantial delay in registration of FIR, existence of civil and arbitration proceedings, and the questionable nature of the alleged transaction, this Court is of the opinion that the matter requires further inquiry. The accused cannot be denied bail in circumstances where his guilt requires determination through trial. In view of above, the instant pre-arrest bail application is allowed and interim order is confirmed on same terms and conditions. Accused to cooperate with investigation and join trial.

J U D G E