

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.691 of 2025

Applicant : Ghulam Hussain son of Shehzad Meer,
through Mr. Shujjat Ali Khan, advocate

Respondent : The State
Through Ms. Rubina Qadir, DPG Sindh duly
assisted by Mr. Kalim Ali Advocate for the
Complainant.

Date of hearing : 09.05.2025

Date of order : 19.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – Applicant Ghulam Hussain seeks pre-arrest bail in a case bearing Crime No. 178/2025 registered at P.S. Manghopir, Karachi, offence under Section 489-F PPC. His earlier application was declined by the learned Additional Sessions Judge-XII, Karachi West vide order dated 14.03.2025 in Bail Application No. 1096/2025.

2. The prosecution theory as per FIR is that Afsar Khan, entered into a sale transaction with the applicant Ghulam Hussain on 20.08.2021 concerning a (14-00) acres parcel of Class-I land situated in Deh Orangi, New Manghopir. The total agreed sale consideration was Rs.60,000,000/- out of which the complainant's business partner allegedly received his due share, while the complainant was to receive the remaining amount from the applicant. In purported discharge of the said liability, the applicant is alleged to have issued two cheques to the complainant bearing Nos. 00453111 & 00453118, each amounting to Rs.2,222,220/- both drawn on Bank Islami. The complainant deposited the cheques at HBL, New Nazimabad Branch, Manghopir, on the respective dates mentioned therein; however, both were dishonoured with the remarks "Stop Payment." Upon contacting the applicant for payment, the complainant alleges that the accused avoided him and failed to fulfil the financial obligation. Thereafter, the complainant claims to have lodged an application before the concerned Police Station and other authorities seeking legal action for the issuance of dishonoured cheques allegedly issued in connection with the land transaction. Consequent upon; case was registered inter-alia on above facts.

3. Learned counsel submitted that the applicant has been falsely implicated with malafide intent by the complainant, which is evident from the contents of the FIR itself. The FIR is silent on when the alleged cheques were handed over by the applicant, which alone casts doubt on the prosecution's version. He contended that there was an unexplained delay of two months in lodging the FIR after the alleged dishonour of cheques on 03.12.2024 and 31.12.2024, and an additional delay of over one month after the complainant's application to the police dated 30.01.2025. Such inordinate and unexplained delay creates serious dents in the prosecution case. He further pointed out discrepancies in the dates of the cheques: Cheque No. 00453111 is dated 30.11.2021, while Cheque No. 00453118 is dated 30.12.2024, but both were allegedly presented in December 2024, raising suspicion about their authenticity and timing. He also submitted that the complainant has initiated multiple FIRs in another district (Nos. 632/2023 and 650/2023 at PS Sohrab Goth under Section 489-F PPC), suggesting misuse of criminal law to pressurize the applicant. It was contended that the complainant had already received the outstanding amount, with the last payment made on 07.04.2022 through one Jamshed, who is ready to submit an affidavit in this regard. Moreover, it was argued that the applicant has filed Suit No. 1074/2024 before this Court for *Declaration, Cancellation, Recovery, Damages and Permanent Injunction* against the complainant and others concerning the same subject matter, and despite being served with summons, the complainant lodged this FIR with malafide intent. It was urged that the dispute, if any, is purely civil in nature but has been converted into criminal battle with police assistance. On these grounds, it was prayed that the applicant is entitled to confirmation of bail.

4. Conversely, learned counsel for the complainant submitted that the accused issued the cheques with dishonest intent, and their dishonour amounts to financial murder of the complainant. He argued that although the offence does not fall within the prohibitory clause, bail is not an absolute right and should be denied in cases involving fraud of this magnitude. It was further submitted that the cheques were dishonoured with the specific bank endorsement "payment stopped by drawer," which demonstrates the accused's mala fide intent. He, therefore, opposed the bail. Learned DPG for the State also supported the stance of learned advocate for complainant.

5. Heard learned counsel for the respective parties and learned DPG for the State. The allegations against the applicant pertain to dishonoured cheques purportedly issued in partial discharge of a liability arising out of a substantial land transaction. However, a deeper examination of the record reveals several circumstances that call for judicial scrutiny. The FIR does not specify when the alleged cheques were handed over, creating ambiguity about the timeline. There is also an unexplained delay in lodging the FIR, both from the date of alleged dishonour (03.12.2024 and 31.12.2024) and subsequent application to the police on 30.01.2025, suggesting an afterthought. The discrepancy in the cheque dates, with one dated 30.11.2021 and another dated 30.12.2024, raises further questions, especially given the presentation of both cheques in December 2024. The claim that the complainant's partner had already received his share and that the remaining amount was settled through Jamshed, who is reportedly willing to submit an affidavit, constitutes a plausible defence. Moreover, the pendency of a civil suit (Suit No. 1074/2024) before this Court concerning the same transaction suggests that the dispute may be civil in nature, now clothed in criminal garb for collateral advantage. In similar context, the Hon'ble Supreme Court has held that where a cheque is issued as *security* and not towards repayment of an existing liability, the offence under Section 489-F PPC is not attracted: *Mian Allah Ditta v. The State* (2013 SCMR 51) and *PLD 2012 Sindh 464 (Malik Safdar Ali v. Syed Khalid Ali)*. The lodging of multiple FIRs under Section 489-F PPC in different jurisdictions also signals possible misuse of the criminal process, as cautioned in *Sheikh Rehan Ahmed v. Judicial Magistrate-II, South Karachi* (2019 MLD 636). It is well-settled that for an offence under Section 489-F PPC, the prosecution must demonstrate that the cheque was issued *with dishonest intention and in discharge of a legally enforceable debt or obligation*. Where these elements are doubtful or require deeper appreciation of evidence, the case falls within the ambit of further inquiry under Section 497(2) Cr.P.C., as held in *Abdul Saboor v. The State* (2022 SCMR 592) and *Noman Khaliq v. The State* (2023 SCMR 2122). The offence being non-cognizable and falling outside the prohibitory clause of Section 497 Cr.P.C., and the applicant having approached the Court with clean hands without any prior criminal record, he is entitled to the concession of pre-arrest bail.

6. Therefore, interim bail granted to accused vide order dated 18.03.2025 is hereby confirmed under same terms and conditions.

Accused to cooperate with investigation and join trial. It is clarified that the above observations are provisional and shall not prejudice the case of either party at trial.

J U D G E