

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Bail Application No. S-288 of 2025

Applicant : Ali Khan @ Abdul Wahab Lohar,
Through Mr. Abdul Sattar Janwari, advocate

Complainant : Through Mr. Safdar Ali Ghori, advocate.

Respondent : The State
Through Mr. Nazir Ahmed Bhangwar, DPG

Date of hearing : 28-07-2025

Date of order : 31-07-2025

ORDER

KHALID HUSSAIN SHAHANI, J. –Applicant Ali Khan @ Abdul Wahab Lohar, seeks pre-arrest bail in a case bearing crime No. 93/2025, registered at Police Station New Foujdari, Shikarpur, for an offence under Section 489-F PPC.

2. The complainant, a Head Constable, alleges that he entered into a business partnership with the applicant, advancing a total sum of Rs. 70,00,000/-. Towards this purported liability, the applicant is said to have issued the cheque in question for Rs.42,00,000/–, which was subsequently dishonored. Conversely, the applicant's position is that the transaction involved a significantly lesser amount, a substantial portion of which has already been repaid. He contends that the subject cheque was furnished as a blank instrument for security purposes only and has been misused by the complainant to settle scores, given the pre-existing animosity evidenced by multiple cross-litigations between the parties, including FIR No. 75/2025 lodged by the applicant's wife against the complainant.

3. Learned counsel for the applicant has reiterated the above contentions, arguing that the applicant is innocent and has been falsely implicated with malicious intent. Counsel argues that the glaring discrepancies in the amounts, coupled with the claim of the cheque being for security, render the prosecution case one for further inquiry. It is emphasized that the offence under Section 489-F PPC does not fall within the prohibitory clause of Section 497(1) Cr.P.C., and thus, grant of bail is the rule. Learned advocate for applicant relied upon 2025 YLR Page No. 617, 2024 SCMR 1567, 2024 SCMR 2066, 2023 SCMR 1712, 2023 SCMR 2122, 2023 SCMR 1948, 2023 SCMR 01, 2021 P.Cr.L.J 914, 2021 P.Cr.L.J Note 88, 2020 YLR-N 22-C, 2019 P.Cr.L.J Note 20, 2018 P.Cr.L.J Note 190. He also relied upon the WhatsApp chat wherein one purported partnership agreement is shown along with the photograph of one blank cheque and on the next page such cheque is filled up by mentioning the amount, name and date.

4. Conversely, the learned DPG, assisted by the learned counsel for the complainant, has vehemently opposed this application. It is argued that the issuance of the cheque and its subsequent dishonor are admitted facts. The prosecution contends that the applicant has a history of involvement in similar financial disputes and that the learned Sessions Court has already dismissed his application for bail after due consideration of the facts, thereby disintitling him to the concession of pre-arrest bail. Learned advocate for complainant relied upon the case law cited at 2023 YLR Note 05, 2023 YLR note 23, 2023 YLR Note 33, 2025 YLR 147, 2023 P.Cr.L.J 398, 2023 P.Cr.L.J 602, 2024 SCMR 1719, 2015 SCMR 1394 and 2020 SCMR 249 and emphasized upon the different litigations filed by the petitioner and her wife against the different people, including a Cr. Misc. Appln. No. 684 of 2025 filed by applicant against present complainant, which was disposed of by the learned Ex-Officio Justice of Peace. Copy of FIR No. 43 of 2020, for offence under section 489-F

PPC of P.S Lodhra against the applicant for an amount of Rs.20,70,000/- (Twenty Lac, Seventy Thousands) copy of FIR No. 33/2023 lodged by Muhammad Bachal against present applicant criminal intimidations, maltreatment and unlawful assembly and the report of DSP Anwar Ali Shaikh wherein an amount of Rs.40,00,000/- was outstanding against the applicant and subsequent registration of the FIR by the wife of applicant against police officials.

5. The central question for determination is whether the applicant has made out a *prima facie* case for the confirmation of pre-arrest bail. The offence under Section 489-F PPC requires the presence of certain essential ingredients: (i) issuance of a cheque; (ii) for the repayment of a loan or fulfillment of an obligation; (iii) its subsequent dishonor; and crucially, (iv) dishonest intent (*mens rea*) at the time of issuance. The mere dishonor of a cheque is insufficient to attract penal consequences. This principle has been consistently upheld by the superior courts, including in *Malik Safdar Ali v. Syed Khalid Ali* (PLD2012 Sindh 464) and *Muhammad Ashraf v. The State* (2021 P.Cr.L.J 586). It is a settled principle of law that the machinery of criminal justice cannot be utilized as a tool for the recovery of disputed financial dues. The record reveals a history of protracted litigation between the parties, and this multiplicity of proceedings is indicative of a deep-seated animosity. In such circumstances, the possibility of embellishment and exaggeration in the factual narrative of the FIR cannot be discounted. Moreover, the case law relied upon by learned counsel for the complainant, which pertains to the principle that malice is not a bar to the registration of an FIR, is distinguishable on the facts. The instant case is set against a unique backdrop of extensive cross-litigation, which makes the question of motive and potential for false implication a relevant consideration at the bail stage.

6. In the present case, the applicant has raised a plausible defense that the cheque was issued as a security instrument. The Honorable Supreme Court of Pakistan in *Muhammad Anwar v. The State & another (2024 SCMR 1657)* and *Mian Allah Ditta v. The State & others (2013 SCMR 51)* has held that where a cheque appears to have been issued as a guarantee or security, the essential elements of Section 489-F PPC are *prima facie* not attracted. The question of whether the cheque was for repayment of a loan or was a security instrument is a factual controversy that can only be definitively resolved by the learned Trial Court after recording evidence.

7. Furthermore, it is a settled principle that the criminal justice system cannot be used as a tool for the recovery of disputed financial dues. The Honorable Supreme Court in *Abdul Saboor v. The State (2022 SCMR 592)* has emphatically reiterated that Section 489-F PPC is not a substitute for civil remedies. Using the threat of incarceration to coerce settlement of a commercial dispute is an abuse of the process of law.

8. Critically, the maximum punishment provided for an offence under Section 489-F PPC is three years, which does not fall within the prohibitory clause of Section 497(1) Cr.P.C. The consistent judicial consensus, crystallized in the *Muhammad Tanveer* case (supra), is that for such offences, grant of bail is the rule and refusal is an exception. The liberty of an individual cannot be curtailed as a punitive measure when the case manifestly calls for further inquiry. In light of the above discussion, given the deep-seated factual controversies, the arguable absence of dishonest intent, the civil nature of the underlying dispute, and the fact that the offence is non-prohibitory, the applicant has successfully made out a case for the confirmation of his pre-arrest bail. Instant application is allowed. Interim pre-arrest bail granted to the applicant, Ali Khan @ Abdul

Wahab Lohar, is hereby confirmed, under same terms and conditions.
Applicant shall join the investigation/trial.

9. It is clarified that any observations made herein are tentative in nature and shall not, in any manner, influence the learned Trial Court during the subsequent stages of the trial. The application stands disposed of in the above terms.

J U D G E

Asghar Altaf/P.A