IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Bail Application No.S-365 of 2025

Applicant:	Abdul Karim son of Muhammad Juman, Khoonharo, *through* Mr. Asad Ali Khakhrani, Advocate.
The State:	*through* Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.
Complainant:	Saddaruddin. (In person)
Date of Hearing:	29-09-2025
Date of Order:	29-09-2025

O R D E R

Ali Haider 'Ada', J:- Through the instant bail application, the applicant seeks post-arrest bail in Crime No. 21 of 2025, registered at Police Station K.N. Shah, for the offence punishable under Section 489-F, P.P.C. The alleged incident is stated to have occurred on 15.10.2024, whereas the FIR was lodged on 05.02.2025. The applicant had initially approached the learned Sessions Judge, Dadu, for grant of pre-arrest bail, but his application was entrusted to the learned Additional Sessions Judge-II, Mehar, who, upon hearing, dismissed the same vide order dated 30.04.2025. Consequently, the applicant was taken into custody from the Court. Thereafter, he moved an application for post-arrest bail before the learned Judicial Magistrate-II, K.N. Shah, which too was dismissed vide order dated 24.05.2025. The applicant then approached the learned Sessions Judge, Dadu, who entrusted the matter to the learned Additional Sessions Judge-II, Mehar, for disposal. The learned Additional Sessions Judge, Mehar-II, upon hearing, once again declined the relief of bail through order dated 11.06.2025.

2. Brief facts of the case are that the complainant is the owner of a rice plant and had business dealings with the present applicant, who runs a rice flour mill and has been in the said business for the last two years. It is alleged that due to an outstanding liability of Rs. 17,00,000/-, the applicant issued a cheque dated 20.11.2024 for the said amount. The cheque, however, was dishonored on presentation on 10.01.2025. The complainant claims that upon his approach to the applicant for settlement of the

liability, he was allegedly kept on false assurances. Having no other option, the complainant lodged FIR on 05.02.2025, while mentioning the date of incident as 15.10.2024, wherein the amount was demanded.

3. Learned counsel for the applicant contends that the dispute arises out of a business transaction, which fact stands admitted in the F.I.R. He submits that the applicant had no dishonest intention at the time of issuance of the cheque, and that a substantial portion of the liability has already been paid. He further argues that the complainant, being greedy in nature, is attempting to extract interest on the amount under the garb of criminal proceedings, and even though a compromise application was filed before the learned trial Court, the same could not be materialized due to such attitude of the complainant. Learned counsel adds that there is an inordinate delay in lodging of the F.I.R, while the alleged offence does not fall within the ambit of the prohibitory clause of Section 497, Cr.P.C. In support of his contentions, reliance has been placed upon the case law reported as *2011 SCMR 1708*, *2025 YLR 711*and *PLD 2017 SC 733*.

4. Conversely, the learned Deputy Prosecutor General appearing for the State opposes the bail plea. He submits that the instant case reflects a financial crime wherein it is a common practice that cheques are issued against outstanding loans or business obligations. However, once the cheques are dishonored, the complainant is left with no remedy but to approach the police for redressal under Section 489-F, P.P.C. He further points out that though compromise proceedings were initiated between the parties, the same could not be concluded due to non-fulfilment of the agreed amount by the applicant. Hence, according to him, the applicant is not entitled to the concession of bail, and he prays for dismissal of the application while seeking affirmation of the impugned orders of the Courts below.

5. The complainant, Sadaruddin, is also present in person. On the previous date of hearing, he filed his affidavit and expressed confidence upon the learned State Counsel to represent him. Today, he has reiterated his stance by submitting that the applicant is fully liable in the instant case, as the amount in question is still outstanding against him and the disputed cheque admittedly bears his signatures. He has, therefore, prayed for dismissal of the bail application.

6. Heard the learned counsel for the applicant, the learned Deputy Prosecutor General for the State, and the complainant in person. Record has also been perused with their assistance.

7. From the perusal of the F.I.R, it transpires that the date and time of the incident has been mentioned as 15.10.2024, whereas the cheque in question is alleged to have been issued on 20.11.2024. It appears rather improbable as to how the complainant could have knowledge on 15.10.2024 of a subsequent dishonor of the cheque which, admittedly, came into existence only later. The complainant is relying upon the date shown as 15.10.2024, but the same does not correspond with the date of issuance of the cheque. If the case of the prosecution is that the liability was acknowledged through issuance of the cheque dated 20.11.2024, then Section 489-F, P.P.C. is not prima facie attracted on the basis of the earlier date of 15.10.2024. Moreover, there is no tangible proof available on record to establish that the present applicant/accused actually received the alleged amount from the complainant as claimed. In this regard, support may be drawn from the case of ***Ali Anwar Paracha v. The State*** **(2024 SCMR 1596).**

8. Furthermore, there is considerable delay between the date of issuance of the cheque and the preparation of the dishonor memorandum. The cheque is shown to have been issued on 20.11.2024, whereas the bank memo reflecting insufficiency of funds bears the date 10.01.2025, i.e., after a lapse of more than one and a half months. Such unexplained delay in presentation of the cheque and issuance of the dishonor memo, prima facie, creates doubt, Moreover, the existence of business transactions between the parties stands admitted. Once such business relationship is acknowledged, it becomes hard, at this stage, to conclusively believe that the dishonoring of the cheque was an act committed with dishonest intent. The complainant himself has admitted that he has been engaged in business dealings with the applicant for the last two years; therefore, the element of dishonest issuance of cheque is not free from doubt. It is also a settled principle that Section 489-F, P.P.C. is not to be used as a tool for mere recovery of amounts arising out of business transactions. Hence, whether the cheque was issued dishonestly, in fulfillment of an obligation, or towards repayment of liability, is a matter that can only be determined after recording of evidence at trial. At this tentative stage, the case squarely

falls within the ambit of further inquiry as envisaged under Section 497(2), Cr.P.C. Reliance is placed upon the case of ***Atif Ali v. The State*** **(2024 SCMR 2066).**

9. It is also significant to note that the alleged offence under Section 489-F, P.P.C. does not fall within the ambit of the prohibitory clause contained in Section 497, Cr.P.C. The principle consistently laid down by the Superior Courts is that where the offence does not fall within the prohibitory clause, grant of bail is to be considered as a rule, while its refusal is to be treated as an exception, subject to existence of extraordinary circumstances. The rationale behind this settled proposition is that in non-prohibitory offences, the law presumes that the accused should not be unnecessarily deprived of his liberty during the pendency of the trial, particularly when his guilt is yet to be determined. The Hon'ble Supreme Court of Pakistan, in the case of ***Noman Khaliq v. The State and another*** **(2023 SCMR 2122),** has reiterated the said principle. Applying the above principle to the present case, the record does not reveal any such exceptional circumstances that may justify withholding the concession of bail from the applicant. Accordingly, the case of the applicant does not call for deviation from the general rule of granting bail in non-prohibitory offences.

10. In view of the foregoing reasons and tentative assessment of the material available on record, the applicant has succeeded in making out a case for grant of post-arrest bail. Accordingly, the instant bail application is allowed. The applicant, Abdul Karim son of Muhammad Juman, Khoonharo, is admitted to post-arrest bail subject to his furnishing a solvent surety in the sum of Rs.100,000/- (Rupees One Hundred Thousand only) and a personal bond in the like amount to the satisfaction of the learned trial Court. Needless to observe that the above findings are purely tentative in nature and shall not prejudice the case of either party at the trial. The learned trial Court is expected to decide the case strictly on the basis of evidence brought before it, without being influenced in any manner by these observations.

J U D G E