

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Bail Application No.454 of 2026

Applicant : Muhammad Kashif
Son of Muhammad Hanif
Through: Mr. Salman Nanji,
advocate

The State : The State:
Through Mr. Siraj Ahmed Khan
Chandio,
Additional Prosecutor General Sindh

Date of hearing : 27.02.2026

Date of Order : 27.02.2026

ORDER

Jan Ali Junejo, J:-- Through this Criminal Bail Application filed under Section 497, Cr.P.C., the Applicant, Muhammad Kashif S/o. Muhammad Hanif, seeks his release on bail in case FIR No. 204/2025, registered at Police Station Artillery Maidan, Karachi, for an offence under Section 489-F, PPC. The Applicant is aggrieved of the orders dated 06.01.2026 and 27.01.2026 passed respectively by the learned Judicial Magistrate/Consumer Protection Court, Karachi-South in Criminal Bail Application No. 01/2026 and the learned Vth Additional Sessions Judge, Karachi-South in Criminal Bail Application No. 222/2026, whereby his bail was declined.

2. As per the FIR, the complainant, an employee of Pakistan Railways, booked Flat No. 401, on Plot No. CM-29, Gwalior Society, Sector 17-A, Scheme 33, Karachi in the name of his wife, Huma Fareed, allegedly from "Hassan Builders" owned by the accused brothers, Asim and Kashif, for a total consideration of Rs. 6,000,000 on 26.02.2022. It is alleged that Rs. 3,300,000 was paid as booking amount under a written agreement stipulating delivery of possession within 10 months against payment of the balance Rs. 2,700,000. Upon expiry of the period, possession was not delivered

and no construction was found at the site. On demand of refund, accused Asim allegedly issued Cheque No. 148101479 dated 20.08.2023 for Rs. 1,000,000, which was dishonoured on 24.08.2024. Thereafter, accused Kashif allegedly issued Cheque Nos. 159655757 and 159655756, both dated 20.08.2024, for Rs. 1,425,000 each; upon presentation on 03.09.2024 both were dishonoured. The complainant alleges dishonest issuance of cheques by both accused. FIR was lodged on 22.08.2025 under Section 489-F, PPC.

3. Learned counsel for the Applicant contends that the Applicant has been falsely implicated with mala fide; the dispute emanates from a civil, contractual arrangement dated 26.02.2022 relating to a sale of immovable property; criminal law is being misused for recovery. It is submitted that (i) there is an inordinate and unexplained delay of nearly one year in lodging the FIR from the last date of presentation of cheques (03.09.2024 to 22.08.2025); (ii) the cheques, if any, were issued as security in aid of settlement/assurance and not "towards repayment of a loan or fulfilment of an obligation" within the meaning of Section 489-F, PPC; (iii) material contradictions exist as to the amount allegedly paid (Rs. 33 lacs paid vis-à-vis Rs. 38.5 lacs claimed); (iv) the complainant's own default under the agreement and a forfeiture clause (Clause 5) negate wrongful loss/mens rea; (v) co-accused Muhammad Asim has already been admitted to bail by the learned Vth Additional Sessions Judge, Karachi-South on 27.01.2026; parity and rule of consistency thus apply; (vi) the case is based on documents already seized, investigation is complete and the Applicant is no longer required for custodial interrogation; (vii) offence does not fall within the prohibitory clause; further inquiry under Section 497(2), Cr.P.C. is made out. Prayer is for admission to bail, subject to surety.

4. Conversely, learned Additional Prosecutor General opposes the bail. It is argued that the Applicant is specifically named;

cheques admittedly emanate from the Applicant and were dishonoured, thereby attracting the mischief of Section 489-F, PPC. The delay is explained by ongoing settlement talks; the quantum involved is substantial; documentary material prima facie connects the Applicant to the transaction and the issuance of cheques; at this stage, the defence of “security cheques” is a disputed factual assertion to be proved at trial. It is urged that no mala fides are established; reliance is placed on the gravity of financial frauds requiring deterrence. Prayer is made for dismissal of bail application.

5. I have considered the arguments advanced by the learned counsel for the parties and perused the material available on record. At the bail stage, deeper appreciation is eschewed; the material is assessed tentatively. The offence alleged under Section 489-F, PPC does not fall within the prohibitory clause of Section 497(1), Cr.P.C. While grant of bail is not a matter of right, the settled principle is that where the offence does not fall within the prohibitory clause, grant is a rule and refusal an exception, subject to the facts of each case. The record reflects admitted civil substratum: a written sale agreement dated 26.02.2022 concerning a flat; reciprocal obligations regarding possession and balance payment; and subsequent discord. Whether the complainant or purchaser first committed default; whether any contractual forfeiture clause operated; whether the cheques were issued in discharge of an existing enforceable liability or merely as security; and whether mens rea of dishonesty existed, are all mixed questions of law and fact requiring evidence. The Supreme Court and this Court have consistently held that where the status of a cheque as “security” or otherwise is under serious debate and the transaction is embedded in civil obligations, the matter ordinarily falls within the ambit of further inquiry under Section 497(2), Cr.P.C., absent exceptional features. In case where bail was granted in an offence under Section 489-F, P.P.C. i.e., *Ali Anwar Paracha v. The State and another* (2024 SCMR 1596), the

Honourable Supreme Court of Pakistan held that: *“In this view of the matter, the question whether the cheque was issued towards fulfilment 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 petitioner is behind the bars since his arrest. 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”*. In another similar offence under Section 489-F, P.P.C., in the case of *Muhammad Anwar v. The State and another (2024 SCMR 1567)*, the Honourable Supreme Court of Pakistan was pleased to grant bail by observing that: *“In view of the above, the question whether the cheques were issued towards repayment of loan or fulfilment 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”*.

6. There is a considerable, prima facie unexplained lapse between the dates of dishonour (24.08.2024 and 03.09.2024) and the FIR (22.08.2025). While negotiations can occur post-dishonour, such inordinate delay, nearly a year, without contemporaneous complaints or notices, tentatively weakens the immediacy of the criminal allegation and lends support to the defence plea that criminal proceedings are being employed as leverage in a civil dispute. This, too, nudges the case into further inquiry. The prosecution case is predominantly documentary (agreement, cheques, bank memos). The investigation has been completed; the challan has been submitted; nothing has been shown that further recovery or custodial interrogation of the Applicant is required.

Moreover, Co-accused Muhammad Asim has already been enlarged on bail by the learned Vth Additional Sessions Judge, Karachi-South vide order dated 27.01.2026. The role attributed to both accused arises out of the same transaction. While it is noted that cheques attributed to each differ and the agreement bears the Applicant's signature, on the tentative record the central questions (nature of liability; security vs. payment; civil default; delay) are common. No exceptional, distinguishing circumstances adversely peculiar to the present Applicant have been pointed out at this stage so as to deny him the benefit of parity.

7. The prosecution relies on jurisprudence counselling caution in financial scams. That principle is well-accepted; however, its application is fact-sensitive. Here, the case is individualized to a bilateral agreement concerning a single unit, not a wide-scale public swindle. Absent special features such as prior convictions, abscondence, threats, or ongoing need for custodial investigation, the general rule favouring bail in non-prohibitory offences guides the discretion. In these circumstances, the case against the Applicant calls for further inquiry within the contemplation of Section 497(2), Cr.P.C. The continued incarceration, before trial and in a documentary, civilly-tinged dispute, risks converting the process into pre-trial punishment.

8. For the foregoing reasons, this Criminal Bail Application is allowed. The Applicant, Muhammad Kashif S/o. Muhammad Hanif, is admitted to post-arrest bail in case FIR No. 204/2025, under Section 489-F, PPC, Police Station Artillery Maidan, Karachi, subject to his furnishing: Solvent surety in the sum of Rs. 200,000/- (Rupees Two Hundred Thousand only), and Personal recognizance bond in the like amount, to the satisfaction of the learned trial Court. It is, however, observed that the findings recorded herein are tentative in nature, made solely for the purpose of deciding the

present bail application, and shall not prejudice the case of either party during the course of trial.

These are the detailed reasons for the Short Order dated 27.02.2026.

JUDGE