

**IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)**

Cr.Misc:BA No.448-B/2025

Saad Ullah Khan

Vs

The State, etc.

ORDER

Date of hearing: **10.10.2025**

For petitioner(s): **Mr. Arif Ullah Khan Awan**
Advocate

For respondent(s): **Mr. Shahid Khan Bangash**
Advocate

For State: **Mr. Muhammad Asghar Khan**
Ahmadzai, A.A.G.

MUHAMMAD TARIQ AFRIDI, J.- The accused / petitioner Saad Ullah Khan seeks post-arrest bail in case FIR No.939, dated 09.09.2025, registered under Section 489-F PPC at Police Station City, Bannu.

2. Brief facts of the case are that the complainant, Irfan Ullah, submitted an application, dated 03.08.2025, to the Regional Police Officer (RPO), Bannu, seeking registration of a criminal case against the accused Saad Ullah. It was averred that on 05.04.2025, the complainant sold gold worth Rs.73,35,000/- to the accused, who, in order to discharge his legal obligation, issued him a cheque bearing No.00106054 for Rs.73,50,000/- drawn on Bank Islami, Lakki Gate Branch, Bannu. When the said cheque was presented to the bank for encashment on 10.04.2025, it was dishonoured due to

insufficient funds in the account of the accused. It was further averred that after mutual negotiation, the accused paid Rs.50,00,000/- to the complainant, but the remaining amount of Rs.23,35,000/- still stands unpaid notwithstanding oral commitments and registered deed, thereby defrauding the complainant. The application was marked to the SHO, Police Station City, where a preliminary inquiry under Section 157 Cr.P.C. was conducted, culminating in the registration of the captioned FIR.

3. Arguments heard. Record perused.

4. Record demonstrates that the complainant approached the Regional Police Officer (RPO), Bannu, through an application dated 03.08.2025, seeking seven-fold action against the accused-petitioner. In the said application, it was alleged that the dishonoured cheque was the consequence of fraud, forgery, and breach of trust, and, on that basis, initiation of legal proceedings was solicited. The complainant further sought recovery of the unpaid amount of Rs. 23,35,000/-, together with compensation for mental agony and financial loss, and also prayed for transfer of title and possession of the petitioner's house, coupled with a request to restrain its alienation by treating it as a lien. It was additionally prayed that the remaining amount be recovered from any other property of the accused-petitioner upon its discovery, and that no cross or false case be registered against the complainant in the event any application is submitted by the accused/petitioner's wife, or other family members.

5. The record, particularly the application submitted by the complainant on 03.08.2025, reveals that out of the total cheque amount of Rs. 73,35,000/-, a sum of Rs. 50,00,000/- had already been paid prior to the submission of the said application

to the RPO, Bannu, leaving an outstanding balance of Rs. 23,35,000/- only. Once a substantial portion of the cheque amount has been paid and the remaining liability stands reduced below the cheque's face value, the cheque ceases to represent the actual subsisting liability. Consequently, the element of dishonest intention in respect of the entire amount *prima facie* stands diluted, rendering the registration of the FIR on that basis as being tainted with *mala fides*. In view of these circumstances, the allegations set forth in the application as well as in the FIR warrant further inquiry within the contemplation of Section 497(2), Cr.P.C.

6. Moreover, the maximum sentence provided under Section 489-F PPC is three years, and thus the offence does not fall within the prohibitory clause of Section 497 Cr.P.C. The petitioner has been behind bars since 10.09.2025 and is no longer required for further investigation. The case against the petitioner rests entirely upon documentary evidence already in the possession of the prosecution, leaving no possibility of its tampering. Reliance is placed on **Noman Khaliq v. The State and another** (2023 SCMR 2122), wherein it was held:

"This Court in the case of Abdul Saboor v. The State (2022 SCMR 592) has categorically held that section 489-F of P.P.C. is not a provision which is intended by the Legislature to be used for recovery of an alleged amount, rather for recovery of any amount, civil proceedings provide remedies, *inter alia*, under Order XXXVII of C.P.C. In this view of the matter, the question whether the cheques were issued towards repayment of loan or fulfillment 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 for the last about five months. 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. Reliance is placed on **Tariq Bashir v. The State** (PLD 1995 SC 34). This Court in a number of cases has held that liberty of a person is a precious right which cannot be taken away without exceptional foundations. We have been informed that all the material is in documentary shape; the investigation is complete and the petitioner is no more required for further investigation.”

7. Similarly, in the case of **Riaz Jafar Natiq v. Muhammad Nadeem Dar and others** (2011 SCMR 1708), it was ruled:

“2. Thus keeping in view the law laid down in the case of **Zafar Iqbal v. Muhammad Anwar and others** (2009 SCMR 1488) ordaining that where a case falls within non-prohibitory clause the concession of granting bail must be favourably considered and should only be declined in exceptional cases. We do not find this to be a case where it should be refused as an exception. Thus, this petition is converted into an appeal and the same is allowed...”

8. Likewise, while allowing bail to accused in **Abdul Saboor v. The State and another** (2022 SCMR 592), the Supreme Court observed:

It is an admitted position that the petitioner is behind the bars for the last six and half months whereas the maximum punishment provided under the statute for the offence under section 489-F, P.P.C. is three years and the offence 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.

9. The case of Bilal Iqbal v. The State (MLD 2025 Peshawar 373) also involved somewhat similar facts and circumstances, wherein bail was granted to the accused.

10. Besides, grant of bail to an accused does not amount to acquittal, and any erroneous grant of bail can be rectified by awarding appropriate punishment if he is found guilty at trial. However, no satisfactory reparation can be offered to an innocent person for his unjustified incarceration, even if he is ultimately acquitted after a prolonged trial.

11. In these circumstances, I am inclined to hold that the petitioner has succeeded in making out a case for grant of bail. Consequently, this petition is allowed, and the petitioner is admitted to bail, subject to his furnishing bail bonds in the sum of Rs.1,00,000/- (Ruppes One Hundred Thousand) with two sureties in the like amount, to the satisfaction of the concerned Judicial Magistrate / MOD, who shall ensure that the sureties are local, reliable, and men of means.

Announced

10.10.2025

-Sd-
Judge

SCANNED

14 OCT 2025

Khalid Khan

14/10/2025