

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3829 of 2017

ORDER:

In this petition filed under Section 438 Cr.P.C, the petitioners/A1 and A.2 seek pre-arrest bail in Crime No.594/2016 of Eluru II Town PS, West Godavari District which was initially registered under Sec.174 Cr.P.C and later altered to Sec.306 r/w 34 IPC.

2) One S.K.Baji was the deceased and he committed suicide on 07.01.2016 by falling under a train. The police initially registered the crime under Sec.174 Cr.P.C and during the course of investigation particularly after examining LW.4—the mother of deceased, altered FIR to one under Sec.306 r/w 34 IPC. The statement of LW.4 briefly is to the effect that the deceased is her second son aged about 13 years working in the Hotel of the 1st accused since few months prior to his death. She was also working in another Hotel. The deceased was also attending dance programs. It is further mentioned that the deceased borrowed Rs.15,000/- from his owner i.e, 1st accused and could not repay the said amount. He also borrowed amounts from some others and he was heavily indebted. Sofaras A.1 is concerned, it is alleged that he used to harass the deceased to do over-duty till the discharge of borrowed amount. He was not paying the regular coolie amount. Since 15 days prior to the incident, the 1st accused used to come to their house and demand the deceased to repay the amount borrowed by him. It is also alleged that twice or thrice he beat the deceased. Since 4 days prior to the incident, the deceased, out of

fear, did not attend his hotel duty. On 06.10.2016, two persons belonging to the hotel of 1st accused came to their house and questioned the deceased as to why he was not attending the hotel duty and they demanded him either to pay the amount due to A.1 or to attend the duty. Finally on the night of 06.10.2016, the 2nd accused who is working in the hotel of 1st accused came to their house and told that on his mediation A.1 lent amount to the deceased and if he stopped coming to the work, the A.1 would scold him and instructed him to attend the work. It is further alleged that on 07.10.2016 at about 7:00am, one S.K.Jalal came to their house and informed that her son was lying dead on railway track near Gun bazar Railway Track. She has attributed that because of the pressure exerted by A.1 for discharge of his amount, her son committed suicide. The investigation is reported to be pending.

3) Seeking bail learned counsel for petitioners would submit that it is false to allege that 1st petitioner/1st accused ever lent any amount to the deceased and on that score he was harassing him either to repay the loan or do extra work. Learned counsel would further submit that A.1 never abused or beat the deceased and since 4 days prior to incident, the deceased stopped coming to their hotel for the reasons best known to him and he has nothing to do with the death of deceased. He would submit that since the deceased borrowed amounts from different persons and unable to repay the amounts, he might have committed suicide out of mental depression. So far as petitioner/ A.2 is concerned, he submits that he never went to the house of deceased and threatened him and all the allegations are imaginations. Learned counsel would further submit that

the charge under Sec.306 IPC would absolutely have no application since there is no instigation or abetment within the meaning of Section 306 IPC. He placed reliance on the decision reported in ***Ravankol Yadagiri Goud and another vs. State of Telangana***¹. He would further submit that both the petitioners are respectable gentlemen and their arrest would hamper hotel business.

4) Learned Additional Public Prosecutor opposed the bail application on the submission that the statement of the mother of deceased is an indicative of the involvement of both the petitioners and investigation is in the nascent stage. He thus prayed to dismiss the bail application.

5) As can be seen from the statement of mother of the deceased, it sheds a *prima facie* accusation against both the accused. It is true both the petitioners denied lending the amount and going to the house of deceased since few days prior to his death. However, the statement of LW.4 belies their contention. Investigation is reported to be pending and therefore, it is not a fit case to grant them anticipatory bail. The decision relied upon by the petitioners can be distinguished on facts. Having regard to the factual circumstances, it was so held that the element of instigation was missing in that case. However, as stated supra, the investigation so far reveals a *prima facie* case against the accused.

6) Therefore, while dismissing the bail application, both the petitioners are directed to surrender before the concerned Court and seek

¹ 2017 (1) ALD CrI. 787

for regular bail, in which case the concerned Court shall decide their bail application on merits on the same date.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 25.07.2017
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