

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.1423 OF 2017**

**ORDER:**

This Criminal Petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to grant pre-arrest bail to the petitioner/A.4 apprehending his arrest in connection with Cr.No.180 of 2016 of Kataram Police Station, Jaishankar Bhoopalapalli District, registered for the offence punishable under Section 306 of the Indian Penal Code, 1860 (for short 'I.P.C.').

The case of the prosecution, in brief, is that the Thallapalli Shankaramma - *de facto* complainant/ mother of the deceased Santhosh Kumar, lodged a complaint making an allegation against the petitioner and others that the deceased-Santhosh Kumar secured an employment as Constable in Central Industrial Security Force (CISF) about two years ago and since then her brother Motkuri Laxmaiah, Motkuri Rajaiah, Motkuri Shankar and her sister-in-laws - Motkuri Uma, Anasuya and Renuka, r/o. Alluru Village, Ramagundam Mandal, intended to perform the marriage of Naveena with Santhosh Kumar and accordingly, Santhosh Kumar agreed to marry her. While so, Santhosh Kumar came back to home 15 days prior to the complaint and found several mobile numbers in the cell phone of Naveena, who is talking to them, on different occasions and thereby he refused to marry her. Thereupon, the younger brothers of Shankaramma and brother-in-law Maddi Raja Babu, r/o. Kamanpur, threatened Santhosh Kumar by phone that how he will not marry Naveena, otherwise, they will give false reports to the police and to make him lose his employment. Thereupon, the said Santhosh

Kumar informed that in the event of losing his employment he will commit suicide by consuming poison and despite it, they continued threatening him to marry Naveena. On account of such threats, due to fear, on 27.11.2016 early hours of the day, Santhosh Kumar, along with his friend-Sampath and his junior paternal uncle proceeded in an auto to Dhanwada Village and there her son-Santhosh Kumar consumed pesticide and later he was shifted to hospital. But, on examination, he was found dead.

The main contention of the learned counsel for the petitioner is that the alleged words uttered by the petitioner would not amount to instigation or inciting the deceased to commit suicide and he has drawn the attention of this court to the Judgments of the Apex Court in **RAMESH KUMAR v. STATE OF CHHATTISGARH<sup>1</sup>**, **MANGATRAM v. STATE OF HARYANA<sup>2</sup>** and **STATE OF KERALA AND OTHERS v. S.UNNIKRISHNAN NAIR AND OTHERS<sup>3</sup>**. Besides relying on the Judgments of the Apex Court, he also contended that allegations made against all the accused are one and same and the other three accused were enlarged on bail by this court, therefore, the petitioner is entitled to pre-arrest bail in the event of his arrest.

During hearing, learned Public Prosecutor for the State of Telanagana contended that earlier request made by the petitioner in Crl.P.No.297 of 2017 was rejected by order dated 25.01.2017 and unless there are changed circumstances, renewal of such requisition cannot be entertained by this court and that apart investigation is not yet completed.

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<sup>1</sup> (2001) 9 SCC 618

<sup>2</sup> (2014) 12 SCC 595

<sup>3</sup> (2015) 9 SCC 639

I have already recorded reasons in the earlier bail application (Crl.P.No.297 of 2017) for rejecting the request of the petitioner. However, the counsel for the petitioner, based on the law declared by the Apex Court in **RAMESH KUMAR v. STATE OF CHHATTISGARH** (supra) while deciding the criminal appeals on conviction recorded by the trial court and confirmed by the appellate court, renewed the request of the petitioner. At paragraph 20 of the said Judgment, the Apex Court held as follows:

“Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out.”

The same principle reiterated in **MANGATRAM v. STATE OF HARYANA** (supra) and in **STATE OF KERALA AND OTHERS v. S.UNNIKRISHNAN NAIR AND OTHERS** (supra). In **STATE OF KERALA AND OTHERS v. S. UNNIKRISHNAN NAIR AND OTHERS**, at paragraphs 10 and 14 of the Judgment, it was held that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this court are clear that in order to convict a person under Section 306 of I.P.C. there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position

that he/ she committed suicide. In **MANGAT RAM v. STATE OF HARYANA** (supra) while deciding the case for the offences punishable under Sections 306 and 498-A I.P.C. i.e. subjecting the wife to cruelty by her husband or any relative of her husband, the Apex Court have gone to the extent of holding that when deceased had contracted marriage with the appellant-accused on her own accord against the wish of her maternal grandfather then, deceased was not expected to commit suicide because she was to stay with the appellant-accused.

These three Judgments are based on the evidence on record after full fledged trial in the appeals. At this stage, it is difficult to find out whether the petitioner had any *mens rea* to drive the deceased to commit suicide.

On the other hand, they are closely related to one another and the deceased during his life time agreed to marry Naveena, after securing employment he refused to marry on the ground that he found certain mobile numbers in the mobile of Naveena and she was found talking to another person. Thereby, he refused to marry her. But the petitioner and others still insisted him to marry Naveena and threatened him to lose his employment as Constable and apprehending loss of job, he committed suicide. Whether the petitioner had any *mens rea* or not is a matter of trial. At this stage, it is difficult to decide the issue of *mens rea* while deciding the application under section 438 of Cr.P.C. The principles laid down in the above Judgments, at best, helpful to decide the act of the petitioner would amount to instigation or incitement or abetment etc.,

According to Section 107(3) I.P.C., intentionally aids, by any act or illegal omission, the doing of that thing would also amount to

abetment. Therefore, basing on the principles laid down in the above Judgments, it is difficult to come to such conclusion *prima-facie*, at this stage, more particularly, the petitioner did commit no offence punishable under Section 306 I.P.C.

The petition is renewal of earlier request made in Crl.P.No.297 of 2017 which was disposed of by this Court on 25.01.2017 declining to grant pre-arrest bail to the petitioner. There are no changed circumstances, after dismissal of the earlier bail application, admittedly, and still investigation is in progress.

In **STATE OF TAMIL NADU V. S.A. RAJA**<sup>4</sup>, at paragraphs 8 & 9 of the Judgment, the Apex Court held that when a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of *res judicata* are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents. Therefore, on this ground also, the petitioners are not entitled to claim bail.

Here the petitioner made sincere attempts to convince this court that there are good and tenable reasons to grant pre-arrest bail based on the principles laid down in the Judgments of the Apex Court referred supra. But it appears that these principles were laid down based on the evidence available on record and in a petition filed under Section 482 Cr.P.C. to quash the complaint. Those principles

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<sup>4</sup> (2005) 8 Supreme Court Cases 380

cannot be applied to the present petition, thereby I find no good or tenable grounds for consideration of the request made by the petitioner at this stage, after dismissal of the earlier bail application in Crl.P.No.297 of 2017. Hence, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

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**M. SATYANARAYANA MURTHY, J**

23.02.2017  
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