

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1293 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/Accused apprehending his arrest in crime No.248 of 2016 of Habeeb Nagar Police station, Hyderabad, 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 one E.Yeshwanth Kumar committed suicide by pouring kerosene and set ablaze to his body for the reason that the petitioner indebted an amount of Rs.1,50,000/-, when he demanded payment of amount several times, despite, he did not repay the amount. Thereupon he lodged a complaint before the Station House Officer, Habeeb Nagar Police Station, Hyderabad, and went to the house of the petitioner along with one constable, the petitioner refused to repay the amount and threatened with dire consequences. Immediately the said Yeshwanth Kumar came back to his house and set ablaze which resulted in the death. On the basis of statement of the said Yeshwanth Kumar, while he was in hospital, the case was registered.

It is the contention of the petitioner that he never borrowed any amount from the said Yeshwanth Kumar and there was an understanding between the father of the said Yeshwanth Kumar and the petitioner regarding the payment of the amount. Therefore, he is no way concerned with the alleged debt and thereby question of threatening him and beating him would not

arise that apart the allegations made in the complaint would not constitute an offence punishable under Section 306 I.P.C. and prayed to enlarge the petitioner on bail.

The learned Public Prosecutor for the State of Telangana, while contending that there are no grounds to grant pre-arrest bail to the petitioner, drawn the attention of this court to the statements recorded by the investigating agency, during investigation, under Section 161 (3) of the Cr.P.C. and also suicide note of the said Yeshwanth kumar, to establish *prima-facie* that the said Yeshwanth Kumar died by committing suicide due to abetment.

No doubt as per the statement of the deceased - Yeshwanth Kumar, recorded while undergoing treatment in hospital, the cause for committing suicide is that he refused to return an amount of Rs.1,50,000/- and beat him at his residence, and even after lodging the complaint, the said Yeshwanth Kumar along with one police constable went to the house of the petitioner and demanded repayment of the amount, but he refused to repay the same and threatened with dire consequences. Now the contention of the petitioner is that such act would not amount to abetment as defined under Section 107 I.P.C.

Section 107 I.P.C. defines the abetment of a thing.

A person abets the doing of a thing, who –

Firstly - Instigates any person to do that thing; or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.

Thus the present facts of the case would fall within the clause (3) i.e. intentional aid or illegal omission of doing that thing. Therefore, beating said Yeshwanth Kumar when he demanded repayment of the amount due to him, would certainly attracts *prima-facie* offence under Section 306 of I.P.C. On the other hand the suicide note recovered during investigation also discloses that the cause for committing suicide is non-payment of amount i.e. act or omission on the part of the petitioner.

Therefore, it is difficult for me at this stage to conclude *prima-facie* that there is no evidence to establish that the petitioner committed no offence. Hence, I find no ground to grant pre-arrest bail to the petitioner. Consequently, the criminal petition is dismissed.

In the result, the criminal petition is dismissed.

M. SATYANARAYANA MURTHY, J

20.02.2017
BV