

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.8414 OF 2021

ORDER:-

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973 seeking pre-arrest bail to the petitioners/A.1 to A.3 in the event of their arrest in connection with Crime No.795 of 2021 of Meerpet Police Station, Rachakonda Commissionerate, registered for the offences punishable under Sections 306 and 506 read with 34 of the Indian Penal Code (for short, 'IPC').

2. The case of prosecution is that a report was lodged by the *de facto* complainant, who is the wife of the deceased, stating that her husband was a contractor and he took contract work of developing the lands of A.1 to A.9 and an amount of Rs.1,25,00,00/- is due from them. The deceased took an amount of Rs.13 lakhs from A.10 and repaid it along with interest, but still the deceased has to pay an amount of Rs.6 lakhs, on which, A.10 threatened the deceased with dire consequences. A.1 and his henchmen also threatened the deceased with dire consequences of killing him. Due to the financial crisis, on 12.10.2021 at 12 Noon at the venture of A.1 to A.3, her husband informed his uncle by name Krishnaiah that he is committing suicide by consuming Cartap Hydrachloride 4% G and when they came there, her husband died and a suicide note was found in the shirt packet of the deceased. Basing on the said report, the present crime is registered.

3. Heard Sri K.Surender, learned counsel for the petitioners, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioners/A.1 to A.3 submits that Section 306 of IPC has no application to the facts of the case and the petitioners neither abetted nor instigated the deceased to commit suicide. While relying on the judgment of the Hon'ble Supreme Court in **Rajesh Vs. State of Haryana**¹, he submits that to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goadings' or 'urging forward'. The word uttered in a fit of anger or omission without any intention cannot be termed as instigation. Therefore, he submits that even if at all, all the allegations made in the complaint are taken into consideration, they do not constitute the offence punishable under Section 306 IPC. Therefore, the petitioners' case may be considered for grant of pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits that as the petitioners were not paid the amounts to the husband of the *de facto* complainant, due to stress, he has committed suicide. He submits that the petitioners instigated the deceased to commit suicide. Therefore, they are not entitled for pre-arrest bail.

6. Having heard learned counsel on either side, it is appropriate to have a look at Section 306 I.P.C. which reads thus:

¹ (2020) 15 Supreme Court Cases 359

“**306.** Abetment of suicide - if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

7. An abetment involves mental process of instigating the person or intentionally aiding the person for doing of a thing. Without a positive act on the part of the accused in aiding or instigating or abetting the deceased to commit suicide, the said person cannot be compelled to face a trial. **(Criminal Application (Apl) No.547 of 2017 the High Court of Judicature at Bombay, Nagpur Bench, Nagpur).**

8. Before holding an accused guilty of an offence under Section 306 of IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative, but to commit suicide. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 of IPC is not sustainable”. **(M.Mohan vs. State of Tamilnadu²).**

9. Thus, the said provision makes it clear that to constitute an offence under Section 306 IPC, the prosecution has to establish: (i) that a person

² 2011 (3) SCC 626

committed suicide, and (ii) that such suicide was abetted by the accused. In other words, an offence under Section 306 would stand only if there is an "abetment" for the commission of the crime.

10. Taking into consideration the allegations made in the complaint and also the judgment of the Supreme Court in Rajesh supra, wherein it was held that ingredients of Section 107 IPC have to be proved to constitute offence under Section 306 IPC, this Court deems it fit to grant pre-arrest bail to the petitioners-A.1 to A.3.

11. Accordingly, the Criminal Petition is allowed and the petitioners/A.1 to A.3 shall be released on bail in the event of their arrest in connection with Crime No.795 of 2021 of Meerpet Police Station, Rachakonda Commissionerate, on condition of executing self bonds for Rs.20,000/- (Rupees twenty thousand only) each with two sureties for a like sum each to the satisfaction of the Station House Officer, Meerpet Police Station, Rachakonda Commissionerate.

Consequently, miscellaneous applications pending, if any, shall stand closed.

LALITHA KANNEGANTI, J

Date :25.11.2021

RRB