

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.8443 OF 2021

ORDER:-

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking pre-arrest bail to the petitioner/A.1 in the event of her arrest in connection with Crime No.804 of 2021 of Hayathnagar Police Station, Rachakonda Commissionerate, registered for the offences punishable under Section 306 of the Indian Penal Code, 1860 (for short 'IPC') and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short, 'the SC/ST Act').

2. The case of the prosecution is that *de facto* complainant lodged a complaint stating that previously a case was registered against her elder son on the allegation that he loved one girl. Since then, her son was suffering from mental agony. On 27.10.2021 at about 9.00 a.m., *de facto* complainant along with her younger son went out on some work and at about 10.00 a.m. when she called her elder son, he did not attend the phone call. Even after frequent calls also, he did not respond. Then, the *de facto* complainant called over phone to her neighbor Mr.Srikanth and requested him to find out. When Srikanth went to the *de facto* complainant's house the doors were closed and bolted from inside. When he saw through window, he found that the *de facto* complainant's son hanged to the ceiling fan tied by a sari. Immediately, the *de facto* complainant rushed to the house and found a letter to the pad in which it is stated that the accused persons tortured him,

as such, he committed suicide. Basing on the said complaint, a case in Crime No.310 of 2020 has been registered.

3. Heard Mr.P.Giri Krishna, learned counsel for the petitioner, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner submits that as the deceased harassing the petitioner's daughter, her daughter gave a complaint on 16.08.2021, which was registered as Crime No.620 of 2021 under Sections 366, 342, 376(2)(n) of IPC and Section 4 of POCSO Act. He submits that as the deceased harassing the daughter of the petitioner, her daughter committed suicide on 15.09.2021. Later, when the son of the de facto complainant committed suicide on 27.10.2021, the present complaint is lodged with false allegations. Learned counsel submits that in fact the petitioner has lost her daughter because of the de facto complainant's son, who caused lot of mental agony to her daughter. He submits that the petitioner has nothing to do with the alleged offence and a false case is foisted against her. There is no allegation of instigation or abetment by the petitioner or any of the persons. Hence, his case may be considered for grant of pre-arrest bail.

5. Learned Assistant Public Prosecutor submits that investigation is still pending and so far five witnesses were examined. He submits that in the suicide note, the deceased has given the name of this petitioner and others. Therefore, the petitioner is 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:

“**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. 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 Tamilnadu¹).**

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

¹ 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 fact that the daughter of the petitioner committed suicide in view of the harassment of the de facto complainant's son, a crime was also registered under POCSO Act and also the judgment of the Supreme Court in M. Mohan 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 petitioner-accused.

11. Accordingly, this Criminal Petition is allowed and the petitioner-accused shall be released on bail in the event of her arrest in connection with Crime No.804 of 2021 of Hayathnagar Police Station, Rachakonda Commissionerate, on condition of her executing a self bond for Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the Station House Officer, Hayathnagar Police Station, Rachakonda Commissionerate. It is made clear that the petitioner shall surrender before the Station House Officer concerned within one week from the date of receipt of a copy of this order. No further extension of time will be granted.

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

LALITHA KANNEGANTI, J

Date :02.12.2021

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