

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.8902 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 petitioners/A.1 to A.5 in the event of their arrest in connection with Crime No.257 of 2021 of Ameenpur Police Station, Sangareddy District, registered for the offence punishable under Section 174 of Cr.P.C.

2. The case of prosecution is that on 27.08.2021 the *de facto* complainant lodged a complaint stating that her daughter committed suicide by hanging, due to depression for not blessing with children and was staying away from her husband. Basing on the said complaint, the police registered a case under Section 174 of Cr.P.C. Later, again the *de facto* complainant came to the police station on 08.11.2021 and lodged a complaint stating that the marriage of her daughter was performed with A.1 on 15.02.2013. Earlier to the death of the deceased, when the accused persons harassed her, she tried to commit suicide by taking sleeping pills. Due to fear of the accused abets her to commit suicide, the deceased asked her mother to take away her from in-laws home. Later the *de facto* complainant and her son went to the in-laws house of her daughter and requested them to see her daughter well, on which, the accused replied that if they give Rs.10 lakhs towards additional dowry they will look after her daughter well. The *de facto* complainant brought

her daughter to her home hoping that her daughter would survive, but since then her daughter has been sick and committed suicide due to harassment meted out by the petitioners. Basing on the said report, the present crime is registered.

3. Heard Mr.L.Ravichander, learned Senior Counsel, appearing on behalf of the petitioners, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned Senior Counsel submits that in the complaint, dated 27.08.2021, the *de facto* complainant herself stated that her daughter is residing with her for the last two years and because of her health condition she has committed suicide by hanging herself. A notice was issued on 14.09.2021 to the petitioners herein demanding them to return the articles worth Rs.25 lakhs and certificate of education pertaining to the deceased forthwith, failing which they will initiate appropriate civil and criminal legal actions against them. It is submitted that the complaint dated 08.11.2021 is an afterthought and the *de facto* complainant has improvised the allegations against all the petitioners in this case. Basing on the complaint, dated 08.11.2021, the police altered the section of law into Section 306 of IPC. Even if all the allegations in the complaint dated 08.11.2021 are taken on its face value, they do not constitute the offence punishable under Section 306 of IPC. As per the first report dated 27.08.2021, the mother of the deceased stated that the deceased is staying along with her from the last two years and absolutely

there was no abetment or instigation on behalf of these petitioners in committing the alleged act. It is submitted that even the notice that was issued after the death of the deceased shows only to settle the disputes and other issues, the present report is lodged. Hence, the petitioners' case may be considered for grant of pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits basing on the complaint dated 08.11.2021, the section of law was altered. He submits that investigation is in progress. In view of the allegations levelled against these petitioners, 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:

“**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 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. In this case, admittedly a complaint was lodged on 27.08.2021. In the complaint, absolutely there is no whisper about any of the harassment meted out by the petitioners. Then a notice was issued on 14.09.2021, where the de facto complainant was demanding to return the articles worth Rs.25 lakhs and later on 08.11.2021 another complaint

¹ 2011 (3) SCC 626

was given. Basing on the same, on 09.11.2021 the section of law was altered. Admittedly, right from the last two years, the deceased is staying along with her mother. Taking into consideration all these facts, this Court deems it appropriate to grant pre-arrest bail to the petitioners/A.1 to A.5.

11. Accordingly, this Criminal Petition is allowed. Petitioners/A.1 to A.5 shall surrender before the Station House Officer, Ameenpur Police Station, Sangareddy District, in connection with Crime No.257 of 2021 within one week from today and on such surrender and executing personal bonds for Rs.20,000/- (Rupees twenty thousand only) each with two sureties for a like sum each to the satisfaction of the said Station House Officer, they shall be released on bail. It is made clear that no further extension of time will be granted.

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

LALITHA KANNEGANTI, J

Date :07.12.2021

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