

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.9085 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 his arrest in connection with Crime No.150 of 2021 of Doma Police Station, Vikarabad District, registered for the offences punishable under Section 174 Cr.P.C.

2. A complaint was lodged by the *de facto* complainant stating that his daughter consumed poison on 05.10.2021 at about 0930 hours, for the reason that she has been suffering from severe stomach pain for the past few days. While undergoing treatment in Premier Hospital, Hyderabad, she died on 07.10.2021. Basing on the said complaint, police registered the present case.

3. Heard Mr.S.Satyam Reddy, learned Senior Counsel, appearing on behalf of the petitioner, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned Senior Counsel submits that initially the complaint was lodged under Section 174 of Cr.P.C. Later, basing on the call records of the deceased and the petitioner/A.1, the section of law was altered to 306 of IPC. In fact, there are simple disputes between the petitioner and deceased. As per call data, on which section of law was altered, deceased forwarded a message that 'if I die will you live happily' and on that the petitioner replied

that 'whatever you want to do, do'. It is submitted that absolutely there is no intention or instigation or abetment on behalf of the petitioner. Hence, the petitioner's case may be granted for grant of pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits that there are specific overt acts against the petitioner and as the investigation is pending, 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 Tamilnadu**¹).

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. Taking into consideration the allegations in the complaint and in view of 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 appropriate to grant bail to the petitioner/A.1.

11. Accordingly, this Criminal Petition is allowed. Petitioner/A.1 shall surrender before the Station House Officer, Doma Police Station, Vikarabad District, in connection with Crime No.150 of 2021 within one week from today and on such surrender and executing a personal bond for a sum of Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the said Station House Officer, he shall be

¹ 2011 (3) SCC 626

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 :13.12.2021
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