

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.9086 OF 2021

ORDER:-

This petition is filed under Sections 437 and 439 of Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking regular bail to the petitioner/A.1 in connection with Crime No.281 of 2021 of Nallakunta Police Station, Hyderabad, wherein the petitioner is alleged to have committed the offences punishable under Sections 363, 342 and 306 read with 34 of the Indian Penal Code, 1860 (for short 'IPC').

2. A report was lodged by the *de facto* complainant stating that on 11.11.2021 her brother's friend Satyanarayana Reddy called her husband and informed that her brother Sureshwar Rao committed suicide. Upon which, she and her husband rushed to the spot and found that her brother hanging to the ceiling fan. She stated that her brother living separately with his wife for the last four years, as there were disputes between them. Her brother was indebted to so many people and was harassed by them. The accused persons were continuously asking money. Basing on the said report, the present crime is registered.

3. Heard Mr.M.V.Hanumantha Rao, learned counsel for the petitioner, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner submits that even as per the case of the *de facto* complainant, her deceased brother borrowed

amounts from several people. As he could not pay the same, he has committed suicide. As per the complaint, both the petitioners were called by the *de facto* complainant, they visited her house and informed that her brother have taken huge amount from them. Learned counsel submits that as per reading of the entire complaint, absolutely there is no allegation of abetment or instigation against the petitioner. Hence, the petitioner's case may be considered for grant of bail.

5. On the other hand, learned Assistant Public Prosecutor submits that accused No.6 is yet to be arrested. Looking into the allegations made in the complaint and as the investigation is pending, the petitioner is not entitled for bail, at this stage.

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. Taking into consideration the fact that there are financial disputes between deceased and petitioner, the petitioner is languishing in jail from 13.11.2021 and also the judgment of the Supreme Court in M. Mohan supra, wherein it was held that ingredients of Section 107 IPC

¹ 2011 (3) SCC 626

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 and the petitioner/A.1 shall be enlarged on bail on his 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 IV Additional Chief Metropolitan Magistrate at Nampally, Hyderabad.

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

LALITHA KANNEGANTI, J

Date :13.12.2021

mar