

**THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

**CRIMINAL PETITION NO.9131 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.4 in the event of his arrest in connection with Crime No.504 of 2021 of Malkajgiri Police Station, Rachakonda Commissionerate, registered for the offences punishable under Sections 306 and 498-A read with 34 of the Indian Penal Code.

2. The case of the prosecution is that the marriage of the deceased was performed with A.1 on 10.07.2015 and it was a love marriage and after the marriage, A.1 to A.4 subjected the deceased to harassment. Further, the A.2, being father-in-law of the deceased, misbehaved with the deceased and unable to bear the same, she committed suicide by hanging to a ceiling fan on 08.08.2021 and immediately she was shifted to Malkajgiri Government Hospital and at about 2.10 p.m. she died. Basing on the complaint of the father of the deceased, police registered the present case.

3. Heard Mr.Apurva M. Gokhale, learned counsel for the petitioner, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner submits that in the entire complaint, there are no specific allegations against the petitioner. All the allegations are alleged against A.2 and other accused. The petitioner is

none other than the brother-in-law of the deceased. He submits that as on the date of commission, the petitioner along with other accused went to the house of the deceased. He submits that in the complaint, absolutely there is no allegation that the petitioner has instigated or abetted the deceased to commit suicide. Further, Section 498-A IPC or 306 IPC has no application as far as the petitioner is concerned. 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 A.1 and A.3 were arrested and enlarged on bail. 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<sup>1</sup>).**

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 no specific overt acts against the petitioner, except that petitioner went to the house of the deceased and in view of the judgment of the Supreme Court in M. Mohan supra, wherein it was held that ingredients of Section 107 IPC

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<sup>1</sup> 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.4.

11. Accordingly, this Criminal Petition is allowed. Petitioner/A.4 shall surrender before the Station House Officer, Malkajgiri Police Station, Rachakonda Commissionerate, in connection with Crime No.504 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 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.

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**LALITHA KANNEGANTI, J**

Date :13.12.2021

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