

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.9724 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.2 and A.3 in the event of their arrest in connection with Crime No.225 of 2021 of Ramachandrapuram Police Station, Cyberabad Commissionerate, registered for the offence punishable under Section 306 read with 34 of the Indian Penal Code, 1860 (for short 'IPC').

2. The case of the prosecution is that the *de facto* complainant is the brother of the deceased Prabhu. Due to disputes between Prabhu and his wife Swapna, on 22.03.2021, his brother committed suicide by hanging himself. Previously, the brothers of Swapna beat his brother on two or three occasions. A panchayat was also held. On 21.03.2021 the brother of the *de facto* complainant called his son-in-law and informed that the brothers of his wife beat him and he has death fear from them. Basing on the report, the present crime is registered.

3. Heard Mr.P.Sriharinath, learned counsel for the petitioners, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioners submits that the allegations made in the complaint do not attract the offence under Section 306 of IPC. Even as per the complaint, there are disputes between the deceased and his wife and petitioners, being the brothers-in-law of the deceased, are trying to settle the

disputes. He submits that the petitioners have nothing to do with the alleged offence and a false case is foisted against them. This Court granted bail to A.1 on 05.11.2021 in Crl.P.No.7926 of 2021. There is no allegation of instigation or abetment by the petitioners. Hence, the petitioners' case may be considered for grant of pre-arrest bail.

5. Learned Assistant Public Prosecutor submits that investigation is still pending and so far ten witnesses were examined. He does not dispute the fact of A.1 granted bail. This is the second bail application and there are no changed circumstances. As such, the petitioners 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 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 fact that there are disputes between the deceased and his wife, due to which, the petitioners, being the brothers-in-law of the deceased, are trying to settle the disputes and in that process certain allegations are made stating that the petitioners have instigated the deceased to commit suicide, *prima facie*, it appears that the ingredients of Section 306 of IPC are not attracted and also the judgment of the Supreme Court in

¹ 2011 (3) SCC 626

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 petitioners.

11. Accordingly, this Criminal Petition is allowed. Petitioners-A.2 and A.3 shall surrender before the Station House Officer, Ramachandrapuram Police Station, Cyberabad Commissionerate, in connection with Crime No.225 of 2021 within one week from today and on such surrender and executing personal bonds for a sum of 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 :28.12.2021

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