

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No. 354 OF 2022

ORDER:

This Criminal Petition under Section 438 Cr.P.C. is filed by petitioner – Accused seeking bail in the event of his arrest in connection with Crime No. 318 of 2021 on the file of Armour Police Station registered for the offence under Section 306 IPC.

2. The case of prosecution is that on 20.11.2021, at about 14.30 hours, complainant Sri Gundi Mahipal lodged a report stating that his cousin namely Maasuri Sravanthi (deceased) and her family with an intention to construct a new house at their native place, entered into an agreement with petitioner and accordingly, paid some amount as advance, but however, petitioner did not commence the work. It is alleged that on 20.11.2021, at about 13.00 hours, deceased along with her husband and others went to the house of petitioner with a request to repay the amount, but petitioner was absent in his house. On that, deceased thought that petitioner would never give the amount and in frustration, she poured petrol and set herself ablaze and succumbed to the burn injuries.

3. Learned counsel for petitioner Sri T. Sujan Kumar Reddy submits that initially, report was registered as 'woman burns' and later section of law was altered to 306 IPC. He submits that as per the report, certain money was lent by the deceased to petitioner and when she went to his house, he was not present and with an apprehension that petitioner might not repay the money, deceased poured petrol and set herself ablaze.

Learned counsel further submits that even as per the case of prosecution, the offence under Section 306 IPC. is not attracted as there is no abetment or instigation on the part of petitioner to commit suicide by the deceased, hence, his case may be considered for grant of pre-arrest bail.

4. On the other hand, learned Assistant Public Prosecutor submits that initially, a case was registered as 'woman burns' and later, basing on the enquiry that petitioner had taken certain amounts and failed to repay the same and on that, deceased committed suicide, section of law was altered. He further submits that investigation is still pending, hence, the case of petitioner is not entitled to be considered for grant of pre-arrest bail.

5. 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."

6. 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).**

7. 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 v. State of Tamilnadu¹**).

8. 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.

9. As, *prima facie*, this Court is of the view that allegations against petitioner do not attract Section 306 IPC, it is appropriate to grant pre-arrest bail to him.

10. Accordingly, this Criminal Petition is allowed. Petitioner – Accused shall surrender before the Station House Officer, Armour Police Station in connection with Crime No. 318 of 2021 within one week from today and on such surrender and on his executing a personal bond for Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the said Station

¹ 2011 (3) SCC 626

House Officer, he shall be released on bail. It is made clear that no further extension of time will be granted.

19th January 2022

LALITHA KANNEGANTI, J

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