

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.857 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.1 to A.4 in the event of their arrest in connection with Crime No.581 of 2021 of Jubilee Hills Police Station, Hyderabad, registered for the offence punishable under Section 174 of Cr.P.C.

2. A report was lodged by the *de facto* complainant on 23.10.2021 stating that her marriage was performed with the deceased in the year 2006 and blessed with three children. Initially her husband worked in Army as MT driver and got retired in the year 2016 and presently working as Security Guard at SBI Banch, Gachibowli. On 13.10.2021 the *de facto* complainant along with children went to her native village for repairing work of bore pump and returned on 16.10.2021 and staying at her mother's house. The deceased came to her mother's house and quarreled with her stating that why you are not talking to me and why you are staying in your mother's house. On 22.10.2021 at about 2300 hours her sister-in-law informed about the deceased committed suicide by hanging. Basing on the said report, the present crime is registered.

3. Heard Mr.C.Vijay Shekar Reddy, learned counsel for the petitioners, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner submits that initially a complaint was registered under Section 174 Cr.P.C. and later basing on the statement given by the mother of the deceased, section of law was altered to 306 IPC. Learned counsel submits that there are disputes between the first petitioner and her husband and in view of the differences, the deceased committed suicide and it is not alleged that the petitioners have abetted or instigated the deceased to commit suicide. Therefore, the ingredients of Section 306 IPC are not at all attracted even as per the statement of the mother of the deceased. He submits that without any basis, the petitioners are arrayed as accused and they have been implicated in this case falsely. Hence, the petitioners' case may be considered for grant of pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits basing on the statement given by the mother of the deceased, section of law is altered to 306 IPC. He submits that *prima facie* Section 306 IPC is attracted. Hence, 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 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

¹ 2011 (3) SCC 626

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 the first petitioner and the deceased are wife and husband, there are certain disputes between them and also 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 fit to grant pre-arrest bail to the petitioners-A.1 to A.4.

11. Accordingly, the Criminal Petition is allowed. Petitioners/A.1 to A.4 shall surrender before the Station House Officer, Jubilee Hills Police Station, Hyderabad, in connection with Crime No.581 of 2021 within one week from today and on such surrender and executing personal bonds for a sum 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.

Miscellaneous applications pending, if any, shall stand closed.

LALITHA KANNEGANTI, J

Date :08.02.2022

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