

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.1277 of 2022

ORDER:

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973 seeking bail to the petitioner/A-2 in the event of his arrest in connection with Crime No.487 of 2021 of Peddapalli Police Station, Peddapalli District, registered for the offence punishable under Section 306 read with 34 IPC.

2. The case of prosecution is that the de-facto complainant lodged a complaint stating that his son got married with A1 and after few years, A1 has developed illicit intimacy with A2, and on one day when her son came to the house, he found that his wife was in close connection with A2, as such, he was mentally disturbed and deserted A1, who went away to her parents house. On 05.12.2021, when the son of de-facto complainant went to A1's house to bring her back, A1 and A2 abused him in filthy language and abetted him to commit suicide, due to such humiliation, her son has committed suicide by consuming pesticide on 06.12.2021 at 18.30 hours at the outskirts of Palitham village and while undergoing treatment, he died.

3. Learned counsel for the petitioner/A2 Mr. G. Ramachandra Reddy, submits that the only allegation against the petitioner is that he is having illegal intimacy with the wife of the deceased i.e., A1 and that A1 left the company of the deceased and started residing at her parents' house and in spite of the request made by the deceased, she has not come back and the deceased has committed suicide. He submits that the matrimonial relations between the parties were strained and they were residing separately from the last 6 years, and in fact, the deceased has also filed OP for divorce. Learned counsel submits that the petitioner is unconnected with the alleged

crime and he has been falsely implicated in this case. He further submits that this Court, by order dated 19.01.2022 in CrI.P.No.350 of 2022 has granted pre-arrest bail to A1 and hence, the case of petitioner may be considered for grant of pre-arrest bail.

4. On the other hand, learned Assistant Public Prosecutor submits that there are allegations against the petitioner that he has threatened the deceased. He submits that the investigation is pending and so far, 6 witnesses were examined and in view of the allegations leveled against the petitioner, he is not entitled for 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 vs. State of Tamilnadu**¹).

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. Taking into consideration the fact that A1 was already granted anticipatory bail by this Court by order dated 19.01.2022 in CrI.P.No.350 of 2022 and also in view of the judgment of the Supreme Court in **M. Mohan's** case 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 petitioner-A-2.

10. The Criminal Petition is allowed. Petitioner – Accused No.2 shall surrender before the Station House Officer, Peddapalli Police Station, Peddapalli District, in connection with Crime No.487 of 2021 within one week from today and on such surrender and 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 House Officer, he shall be released on bail. It is made clear that no further extension of time will be granted.

LALITHA KANNEGANTI, J

17th February, 2022.

sj

¹ 2011 (3) SCC 626