

THE HONOURABLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO. 1343 OF 2022

O R D E R:

This Criminal Petition is filed under Section 438 of Cr.P.C. seeking to enlarge the petitioners/Accused Nos.1 and 2 on bail in the event of their arrest in connection with Cr.No.66 of 2022 on the file of Sanathnagar Police Station, registered for the offence punishable under Section 306 read with 34 of IPC.

2. The case of the prosecution is that on 6.2.2022, police received a complaint from the de facto complainant stating that on 5.2.2022 at 15.00 hours, his son Jameel had his lunch and went into his room and locked it from inside. At 20.00 hours the complainant noticed that his son didn't come out of his room and on suspicion peeped through the window and found his son Jameel committed suicide by hanging to the ceiling fan with a nylon rope. The complainant along with his family broke open his room and shifted him to Leaf Hospital and the duty Doctor declared him to be brought dead. The complainant stated that his son Jameel committed suicide unable to bear the mental harassment from his wife Sohaila Khan and father-in-law Nayeem Ahmed Khan (A1 and A2).

3. The learned counsel for petitioners submits that the petitioners herein (A1 and A2) are none other than wife and father-in-law of deceased and that even if all the allegations are taken on its face value,

they do not attract the offence under Section 306 IPC. A perusal of the complaint would disclose that there are matrimonial disputes between the parties and the same cannot be termed as abetment to commit suicide. Learned counsel further submits that the 1st petitioner has given complaint against the deceased under Section 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act and the deceased was remanded to judicial custody. In the complaint, defacto complainant has stated the differences between 1st petitioner and deceased and basing on the said allegations, the present complaint is registered. Since the petitioners have not instigated or abetted the deceased to commit suicide, they may be granted bail.

4. On the other hand, Sri K.V.L.Narasimha Murthy has filed implead petition on behalf of defacto complainant and submits that in view of harassment meted out by the Accused, the deceased has committed suicide. It is further submitted that in view of grave allegations leveled against the petitioners, petitioners are not entitled for anticipatory bail.

5. Learned Assistant Public Prosecutor submits that the allegations in the complaint clearly attract the offence under Section 306 IPC and so far four witnesses were examined and investigation is still pending, hence, at this stage, the petitioners are not entitled for anticipatory 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 v. State of Tamilnadu¹).**

¹ 2011 (3) SCC 626

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 allegations in the complaint where *prima facie*, it appears that ingredients of Section 306 are not attracted, this Court deems it appropriate to grant anticipatory bail to the petitioners.

11. The Criminal Petition is allowed. Petitioners – Accused Nos.1 and 2 shall surrender before the Station House Officer, Sanathnagar Police Station, Cyberabad in connection with Crime No. 66 of 2022 within one week from today and on such surrender and executing a personal bond for 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.

LALITHA KANNEGANTI, J

Date: 18.2.2022
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THE HONOURABLE SMT. JUSTICE LALITHA KANNEGANTI

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18.2.2022

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