

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.1744 OF 2022

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 petitioner/accused in the event of her arrest in connection with Crime No.2 of 2020 of Hajipur Police Station, Mancherial District, registered for the offence punishable under Section 174 of Cr.P.C.

2. The case of the prosecution that on 08.01.2020 a report was lodged by the petitioner, who is wife of the deceased, stating that on 06.01.2020 her husband told her that he is suffering from severe stomach pain and swallowed tablets kept with him. Later, she noticed that her husband closed the doors and when she saw through window, she found her husband hanging to the fan with a sari in the bedroom of her elder sister. Immediately, she made hues and cries and the neighbours came there and bring down her husband from the hanging and shifted to Medilife Hospital, Mancherial, for treatment. As the health condition of her husband became very critical, shifted him in Gandhi Hospital, Secunderabad, where her husband died while undergoing treatment on 07.01.2020. Basing on the said report, the present crime is registered.

3. Heard Mr.R.Rama Krishna, learned counsel for the petitioner, 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. It is stated that the mother of the deceased found diaries, wherein it is written that due to the harassment of the petitioner, the deceased committed suicide and the petitioner is responsible for the death of the deceased. Basing on that, Section 306 IPC is invoked. He submits that basing on the usual differences between the wife and husband, the deceased committed suicide and it cannot be said that Section 306 IPC is attracted. Absolutely, there is no instigation or abetment on the behalf of the petitioner. Hence, the petitioner's case may be considered for grant of pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits that investigation is pending and so far eight witnesses were examined. In view of the allegations levelled against the petitioner, he is 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 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 allegation that in view of the harassment made by the petitioner, who is wife of the deceased, he committed suicide 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 petitioner/accused.

11. Accordingly, this Criminal Petition is allowed. Petitioner/accused shall surrender before the Station House Officer, Hajipur Police Station, Mancherial District, in connection with Crime No.2 of 2020 within one week from today and on such surrender and executing a personal bond for a sum Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like

¹ 2011 (3) SCC 626

sum each to the satisfaction of the said Station House Officer, she shall be released on bail. It is made clear that no further extension of time will be granted.

Miscellaneous petitions, pending if any, shall stand closed.

LALITHA KANNEGANTI, J

Date :03.03.2022

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