

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.1733 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 his arrest in connection with Crime No.124 of 2020 of Meerpet Police Station, Rachakonda Commissionerate, registered for the offence punishable under Section 174 of Cr.P.C.

2. A report was lodged by the *de facto* complainant stating that since six years her husband is working in Sri Dhara Dairy business at Chitanya Hills, Meerpet and three years back her husband along with the petitioner was running dairy business in partnership and later, her husband alone running dairy business separately. On 07.02.2020 at 1530 hours, when she went to school for getting her daughter back, her husband was in balcony and she came back at 4.00 p.m. and found that bedroom in the first floor was closed with inside bolt. When she raised cries, her husband not opened the door, then she made a call to her husband's friend Ananth Kumar. Immediately, he came to her home and break opened the door and found that her husband committed suicide by hanging to a ceiling fan with yellow colour chunni. Immediately, they got down him in floor and shifted nearby

hospital, where they told that he died. She noticed one suicide in the dressing table. As per suicide note, the petitioner is responsible for the death of her husband. Basing on the said report, the present crime is registered.

3. Heard Mr.N. Harinadh, 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. and section of law was altered to 306 IPC basing on the suicide note. He submits that even if the said suicide note contents are taken into consideration, the offence under Section 306 IPC is not attracted. He further submits that the petitioner is proprietor of Sree Dhara Dairy Products and executed a deed on 06.02.2020 and received a sale consideration of Rs.2,00,000/- for selling the said dairy unit. It is submitted that it is purely a financial transaction between the parties and basing on the suicide note, it cannot be said that the petitioner has committed the offence under Section 306 IPC. There is no allegation of instigation or abetment by 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 the petitioner is responsible for the death of the deceased and Section 306 IPC is attracted against the petitioner. He submits that in the suicide note, the deceased has given the name of this petitioner. As the investigation is pending, the petitioner 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 suicide note, it appears that there are financial transaction between the parties and also the judgment of the Supreme Court in M. Mohan supra, this Court deems it fit to grant pre-arrest bail to the petitioner/accused.

¹ 2011 (3) SCC 626

11. Accordingly, this Criminal Petition is allowed. Petitioner/accused shall surrender before the Station House Officer, Meerpet Police Station, Rachakonda Commissionerate, in connection with Crime No.124 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 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.

Miscellaneous petitions, pending if any, shall stand closed.

LALITHA KANNEGANTI, J

Date :03.03.2022

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