

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.1889 of 2022

ORDER:

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973, seeking bail to the petitioner/A3 in the event of his arrest in connection with Crime No.11 of 2022 of Kondapur Police Station, Sangareddy District, registered for the offence punishable under Section 306 read with 34 IPC.

2. The case of prosecution is that the de-facto complainant has lodged a complaint stating when her husband, by name, Errolla Devidas @ Devaiah, was slept in the agriculture fields of Mallepally Rathnaiah, A1 to A3 came there and blamed her husband alleging that he has committed theft of current motor and its cable wire and they also harassed her husband, due to which, he depressed mentally and committed suicide by hanging on 18.01.2022 at about 14.00 hours.

3. Learned counsel for the petitioner/A3 Mr. P.Srihari Nath submits that the petitioner is alleged to have committed the offence under Section 306 read with 34 IPC and the allegation against him is that he along with the other accused has humiliated the deceased stating that he has committed theft of current motor and its cable wire, but the allegations in the complaint do not attract the offence under Section 306 IPC as there is

no abetment or instigation by the petitioner to commit suicide and hence, the petitioner's case may be considered for grant of pre-arrest bail.

4. On the other hand, learned Assistant Public Prosecutor submits that the investigation is pending and so far, 5 witnesses were examined. He submits that there are specific overt acts against the petitioner and as A1 and A2 were already arrested and remanded to judicial custody and they have granted regular bail by the Court below, petitioner 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 Tamilnadu¹**).

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 allegations against the petitioner, *prima facie*, it appears that the ingredients of Section 306 IPC are not attracted, this Court deems it appropriate to grant pre-arrest bail to the petitioner-A3.

¹ 2011 (3) SCC 626

10. The Criminal Petition is allowed. Petitioner – Accused No.3 shall surrender before the Station House Officer, Kondapur Police Station, Sangareddy District, in connection with Crime No.11 of 2022, 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.

9th March, 2022.
sj

LALITHA KANNEGANTI, J