

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No. 1966 OF 2022

ORDER:-

This Criminal Petition is filed under Section 438 Cr.P.C. by the petitioner – accused seeking bail in the event of his arrest in connection with Crime No. 11 of 2022 of Sarangapur (Nirmal) Police Station registered for the offences punishable under Sections 384 and 306 IPC.

2. The case of the prosecution is that one Smt. Patari Kavitha gave a report on 22.02.2022 stating that she along with her husband Sri Pateri Suman (deceased) was doing business in maize for the last six years. It is stated that the petitioner supplied inferior quality maize to her husband which resulted in financial loss. It is stated that the petitioner obtained cheques, Aadhar Card and pan card and obtained signatures on plain paper and recovered a sum of Rs.13 lakhs from her husband. The said payment was made by way of cheques, google pay, phone pe and account transfer. It is alleged that the petitioner threatened the deceased that he would present the cheques for clearance and if cheques bounce, he would file criminal cases and also threatened him with dire consequences. It is stated that

due to the harassment, the deceased committed suicide by hanging and left suicide note.

3. Sri A. Prabhakar Rao, learned counsel for the petitioner submits that as per the complaint, the petitioner supplied defective maize to the deceased, who sustained losses and the petitioner demanded money for the supplies made; they have also paid amounts to the petitioner through different transactions and as the petitioner pressurized to pay the remaining amounts or else he would kill their family, the deceased committed suicide. He submits that to constitute the offence under Section 306 IPC., there should be instigation and abetment on behalf of the petitioner. It is submitted that as per the suicide note, he owe several amounts to other persons also which shows that as he is in financial crisis, he committed suicide. The learned counsel relied on the judgment of the Apex Court in ***M.Arjunan v. State, represented by its Inspector of Police***¹, wherein in para 7, it is observed that *‘the essential ingredients of the offence under Section 306 IPC are (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by*

¹ (2019) 3 SCC 315

itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under section 306 IPC’. Learned counsel also relied on the judgment of the Apex Court in *S.S. Chheena v. Vijay Kumar Mahajan and another*², wherein it is observed that *‘temperament of person committing suicide is relevant, deceased was undoubtedly hypersensitive, human sensitivity of each individuals differs and different people behave differently in same situation’.* He further submits that the petitioner is ready to cooperate with the investigation, hence, his case may be considered for grant of pre-arrest bail.

4. On the other hand, learned Assistant Public Prosecutor submits that because of the harassment and instigation by the petitioner, the deceased committed suicide. He submits that so far, five witnesses were examined and in view of the allegations levelled against the petitioner, he is not entitled for pre-arrest bail.

² (2010) 12 SCC 190

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***³).

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 financial transactions between the parties and also the suicide note, which indicates that the deceased owes several amounts to other persons, and also taking into consideration the judgments of the Apex Court relied on by the learned counsel for the petitioner, this Court is of the opinion that the ingredients of Section 306 IPC. i.e. abetment or instigation *prima facie* appears to be not

³ 2011 (3) SCC 626

found. Hence, this Court deems it appropriate to grant pre-arrest bail to the petitioner.

10. The Criminal Petition is therefore, allowed. Petitioner – Accused shall surrender before the Station House Officer, Sarangapur (Nirmal) Police Station 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.

LALITHA KANNEGANTI, J

10th March 2022

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