

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL PETITION No.8228 OF 2022****ORDER:**

This Criminal Petition is filed under Section 438 of the Code of Criminal Procedure, 1973 seeking pre-arrest bail to the petitioner, who is arrayed as Accused No.9 in the event of his arrest in Crime No.795 of 2021 on the file of Station House Officer, Meerpet Police Station, Rachakonda registered for the offences punishable under Sections 306 and 506 read with Section 34 of Indian Penal Code.

2. The case of the prosecution is that a report was lodged by the de facto complainant, who is the wife of the deceased, stating that her husband was a contractor and he took contract work of developing the lands of A1 to A9 and an amount of Rs.1,25,00,000/- is due from them. The deceased took an amount of Rs.13 lakhs from A10 and repaid it along with interest, but still the deceased has to pay an amount of Rs.6 lakhs, on which, A10 threatened the deceased with dire consequences. A1 and his henchmen also threatened the deceased with dire consequences of killing him. Due to the financial crisis, on 12.10.2021 at 12 Noon at the venture of A1

to A3, her husband informed his uncle by name Krishnaiah that he is committing suicide by consuming Cartap Hydrachloride 4% g and when they came there, her husband died and a suicide note was found in the shirt packet of the deceased. Basing on the said report, the present crime is registered.

3. Heard the learned counsel for the petitioner and learned Assistant Public Prosecutor for the respondent-State. Perused the record.

4. Learned counsel for the petitioner submits that Section 306 of IPC has no application to the facts of the case and the petitioners neither abetted nor instigated the deceased to commit suicide. While relying on the judgment of the Hon'ble Supreme Court in *Rajesh v. State of Haryana*<sup>1</sup>, he submits that to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goadings' or 'urging forward'. The word uttered in a fit of anger or omission without any intention cannot be termed as instigation. Therefore, he submits that even if at all, all the allegations made in the

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<sup>1</sup> (2020) 15 Supreme Court Cases 359

complaint are taken into consideration, they do not constitute the offence punishable under Section 306 of IPC. He also submits that this Court by order dated 22.11.2021 in Crl.Petition Nos.8272 and 8273 of 2021 granted bail to the Accused Nos.4 and 5. Therefore, the petitioners' case may be considered for grant of pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits that the charge sheet is already filed against Accused Nos.1 to 6.

6. Having heard learned counsel on either side, it is appropriate to have a look at Section 306 IPC 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. An 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 Tamilnadu<sup>2</sup>).

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

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<sup>2</sup> 2011 (3) SCC 626

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 made in the complaint and also the judgment of the Supreme Court in *Rajesh supra*, wherein it was held that ingredients of Section 107 IPC have to be proved to constitute offence under Section 306 IPC and in the interest of completion of investigation, this Court deems it fit to grant pre-arrest bail to the petitioner/Accused No.9.

11. Accordingly, the Criminal Petition is allowed and the petitioner/Accused No.9 is granted anticipatory bail subject to the following terms and conditions:

i) The petitioner/Accused No.9 is directed to surrender before the Station House Officer, Meerpet Police Station, Rachakonda within one week from today, and on such surrender, he shall be enlarged on bail on his executing personal bond for a sum of Rs.20,000/- (Rupees Twenty Thousand Only) with two sureties to the like sum each, to its satisfaction.

ii) The petitioner/Accused No.9 shall appear before the concerned Court on every date of hearing without fail.

iii) The petitioner/Accused No.9 shall abide by the other conditions stipulated in Section 438(2) Cr.P.C.

Miscellaneous applications, if any, pending shall stand closed.

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**K.SURENDER, J**

Date: 21.09.2022  
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