

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.9873 of 2021

ORDER:

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973 seeking bail to the petitioners/A-1 to A-3 in the event of their arrest in connection with Crime No.508 of 2020 of KPHB Colony Police Station, Cyberabad District, registered for the offence punishable under Section 306 IPC.

2. The case of the prosecution is that the *de facto* complainant lodged a complaint on 19.06.2020 at 06.30 hours stating that his co-brother, namely, Varanasi Viswanath, aged 64 years, was found missing and his whereabouts are not known and his cell number was not responding and he is having financial problems.

3. Learned senior counsel for the petitioners Sri L. Ravi Chander, representing Sri Akkam Eshwar, learned counsel for the petitioners, submits that initially, a complaint was registered under Section 174 Cr.P.C., for man missing, later, basing on the suicide note, the Section of law was altered to Section 306 IPC. Learned Senior Counsel submits that in the suicide note, initially it was mentioned that no one is responsible for his death and in the later part, the names of the petitioners are mentioned. Learned Senior Counsel further submits that in the alteration memo, it is stated that the deceased has joined in the company as Executive Director in the month of October, 2017, and they have taken railway sub-contract doubling work from Bhimavaram to Tanuku and the company has given cheque power to the husband of the deceased and he will be the in-charge for the said doubling work and the management assured that they will invest the amount and he should carry out the entire work, but as they did not complete the work, their contract work was terminated and the deceased had informed to his wife that as the vendors pressurized him, he has issued cheques, later, in the month of December, 2019, she went to USA, and in the month of January, her husband i.e., deceased came to USA, where he received phone calls from

Chandrasekhar and Sitharam, who have insisted him to return to India to settle the issues. It is stated in the said memo that the accused had instigated the vendors to pressurize on the deceased and unable to bear the pressure, he committed suicide. Learned counsel further submits that even if all the allegations in the complaint are taken on its face value, they do not attract the offence under Section 306 IPC, and it is purely financial transaction between the parties. He further submits that as the cheques issued by the deceased were dishonoured, check bounce cases were registered and not able to bear the said pressure, the deceased has committed suicide and absolutely, there is no instigation or abetment on behalf of the petitioners and as such, their case may be considered for pre-arrest bail.

4. Learned Assistant Public Prosecutor submits that the investigation is pending, so far, 6 witnesses were examined. Therefore, the petitioners are 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 Tamilnadu**¹).

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 fact that it is purely a financial transaction and unable to bear the pressure due to cheque bounce cases, the deceased has committed suicide and also the judgment of the Supreme Court in **M. Mohan's** case 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 petitioners-A-1 to A-3.

10. Accordingly, this Criminal Petition is allowed and the petitioners-A1 to A3 shall surrender before the Station House Officer, KPHB Colony Police Station, Cyberabad District, in connection with Crime No.508 of 2020 within one week from today and on such surrender and executing a personal bond for Rs.20,000/- (Rupees twenty thousand only) each with two sureties for a like sum each to the satisfaction of the said

¹ 2011 (3) SCC 626

Station House Officer, they shall be released on bail. It is made clear that no further extension of time will be granted.

11. Consequently, miscellaneous applications pending, if any, shall stand closed.

3rd January, 2022

sj

LALITHA KANNEGANTI, J