

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.9940 of 2021

ORDER:

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973 seeking bail to the petitioner/A-2 in the event of his arrest in connection with Crime No.245 of 2021 of Velgatur Police Station, Jagtial District, registered for the offences punishable under Section 306 read with 34 IPC.

2. The case of the prosecution is that the de-facto complainant lodged a complaint stating that there were land disputes between her husband and her father-in-law, who sold Ac.0.30 gts of land to the brother of her husband, and a panchayat was held before their caste elders on 29.07.2021, wherein her younger father-in-law threatened her husband that he will beat with cheppal, due to which, her husband suffered by remembering their words, and that on 08.08.2021 at 9.00 PM, after dinner, her husband has committed suicide by hanging.

3. Heard Mr Kondadi Ajay Kumar, learned counsel for the petitioner and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner submits that absolutely, there are no allegations against the petitioner, except stating that he has accompanied with A1. Learned counsel submits that the ingredients of Section 306 IPC are not attracted in the facts of the case and absolutely, there is no instigation or abetment on the part of the petitioner to commit suicide by the deceased. Learned counsel further submits that admittedly, even as per the complaint, there were certain disputes between the parties with regard to a piece of land and hence, his case may be considered for pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits that as per the complaint, the offence under Section 306 IPC is attracted and as the investigation is pending and 6 witnesses were examined, 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).**

¹ 2011 (3) SCC 626

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. Even as per the complaint, there are no specific overt acts against the petitioner. Even otherwise, *prima facie*, it appears that the petitioner has not instigated or abetted the accused to commit suicide. Taking into consideration the circumstances 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 petitioner-A-2.

11. The Criminal Petition is allowed. Petitioner – Accused No.2 shall surrender before the Station House Officer, Velgatur Police Station, Jagtial District, in connection with Crime No.245 of 2021 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.

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

LALITHA KANNEGANTI, J

3rd January, 2021.

sj