

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.10138 OF 2021

ORDER:-

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking pre-arrest bail to the petitioner/A.5 in the event of her arrest in connection with Crime No.94 of 2021 of Ibrahimpatnam (RCK) Police Station, Rachakonda Commissionerate, registered for the offence punishable under Section 306 of the Indian Penal Code, 1860 (for short 'IPC').

2. A report was lodged by the *de facto* complainant stating that his younger son-Rajashekar married with the petitioner/A.5 and blessed with two children. As there were disputes between them, the petitioner is staying with her parents' house since one year. On 15.04.2021 at about 2300 hours, his wife noticed that their son Rajashekar committed suicide by hanging to ceiling rod with saree at his residence. Immediately she called one Jangaiah, who is neighbor, dropped him down, and found dead. They found one suicide note in the packet of deceased, where it is mentioned that his elder and younger brothers-in-law and mother-in-law are responsible for his death. Basing on the said complaint, the present crime has been registered.

3. Heard Mrs.Y.Harini, learned counsel for the petitioner, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner submits that even as per the suicide note, the deceased's elder brother-in-law, younger brother-in-law and mother-

in-law are responsible for his death. It is submitted that without any basis, the petitioner is arrayed as accused and absolutely there are no allegations against the petitioner. Further, at any stretch of imagination Section 306 of IPC has no application to the facts of the case. There is no allegation of instigation or abetment by the petitioner or any of the persons. Hence, the petitioner's case may be considered for grant of pre-arrest bail.

5. Learned Assistant Public Prosecutor has passed the suicide note, wherein it is stated that both elder and younger brothers-in-law and mother-in-law are responsible for his death.

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**).

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. Taking into consideration the suicide note, wherein there are no allegations against the petitioner, and also the judgment of the Supreme Court in M. Mohan 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.5.

11. Accordingly, this Criminal Petition is allowed. Petitioner/A.5 shall surrender before the Station House Officer, Ibrahimpatnam (RCK) Police Station, Rachakonda Commissionerate, in connection with Crime No.94 of

¹ 2011 (3) SCC 626

2021 within one week from today and on such surrender and executing a personal bond for a sum Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the said Station House Officer, she shall be released on bail. It is made clear that no further extension of time will be granted.

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

LALITHA KANNEGANTI, J

Date :04.01.2022

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