

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.10142 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 petitioners/A.1 and A.2 in the event of their arrest in connection with Crime No.104 of 2021 of Municipally Police Station, Sangareddy District, 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 her husband borrowed some money from petitioner No.1/A.1 for their needs and about 20 days prior to the incident petitioner No.1/A.1 called her husband, organized a panchayat and forced him to give debt amount, otherwise give land. Since then, her husband was suffering from mentally by keeping the matter in mind and on 10.11.2021 at about 0900 hours, her husband went to the agricultural field and committed suicide by hanging to branch of Tamarind Tree with a nylon rope. Basing on the said complaint, the present crime has been registered.

3. Heard Mr.P.Sriharinath, learned counsel for the petitioners, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioners submits that even if all the allegations are taken the face value, they do not attract the offence under Section 306 of IPC. There is absolutely no abetment or instigation on the part

of the petitioners. Hence, their case may be considered for grant of pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits that so far five witnesses were examined. As the investigation is pending, the petitioners are 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 Tamilnadu**¹).

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 fact that it is purely a civil dispute, even in the complaint allegations taken into consideration, it is clearly stated that the deceased borrowed certain amount from the petitioners and they have demanded the said money 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 petitioners-A.1 and A.2.

11. Accordingly, this Criminal Petition is allowed. Petitioners/A.1 and A.2 shall surrender before the Station House Officer, Municipally Police Station, Sangareddy District, in connection with Crime No.104 of 2021 within one week from today and on such surrender and executing personal bonds for a sum Rs.20,000/- (Rupees twenty thousand only) each with two sureties for a

¹ 2011 (3) SCC 626

like sum each to the satisfaction of the said Station House Officer, they 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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