

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.10156 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.1 in the event of his arrest in connection with Crime No.28 of 2021 of Asifabad Police Station, Komaram Bheem Asifabad 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 brother of the deceased stating that her sister's marriage was performed with one M.Balawant Rao on 18.11.2005 and they blessed with two female children. The family members of her sister harassed her mentally pertaining to property issue, due to which, his sister consumed poison on 14.01.2021 at about 8.30 p.m. and while undergoing treatment, on 18.01.2021 at about 11.24 p.m., she died. Basing on the complaint of the brother of the deceased, police registered the present case.

3. Heard Mr.Allam Ramesh, 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 complaint, absolutely there are no specific overt acts against the petitioner and all the allegations are made against the members of his family. In fact, this Court has granted bail to A.3 to A.8 in CrI.P.No.7576 of 2021 by order dated 20.12.2021. He submits that Section 306 IPC has no application to the

facts of the case. Hence, the petitioner's case may be considered for grant of pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits so far six witnesses were examined. As the investigation is pending, 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 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 there are no specific allegations against the petitioner, already the other accused have granted bail and in view of 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 appropriate to grant bail to the petitioner/A.1.

11. Accordingly, this Criminal Petition is allowed. Petitioner/A.1 shall surrender before the Station House Officer, Asifabad Police Station, Komaram Bheem Asifabad District, in connection with Crime No.28 of 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, he

¹ 2011 (3) SCC 626

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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