

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI  
THURSDAY, THE TWENTIETH DAY OF JUNE,  
TWO THOUSAND AND TWENTY FOUR

:PRESENT:

THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO  
CRIMINAL PETITION NO: 1792 OF 2024



**Between:**

Nahida @ Soundarya P S, W/o Mohammed Salman Shariff, Aged about 29 years, R/o H. No. 48/1, 2nd Floor, D Street, Bidarahalli, Benson Town, Bangalore North, Karnataka.

**...Petitioner/Accused No.5**

**AND**

The State of Andhra Pradesh, Rep. by its Public Prosecutor High Court of Andhra Pradesh, Amravati.

**...Respondents**

Petition under Section 438 of Cr.P.C, is filed praying that in the circumstances stated in the memorandum of grounds filed in support of the Criminal Petition, the High Court may be pleased to grant anticipatory bail to the Petitioner / Accused No.5 in the event of their arrest in connection with Crime No. 70 of 2023 under Section 306 r/w 34 of IPC on the file of Ulindakonda Police Station, Kurnool District.

The petition coming on for hearing, upon perusing the Petition and the memo of grounds filed in support thereof and upon hearing the arguments of Sri Sivaprasad Reddy Venati, Advocate for the Petitioner and of Assistant Public Prosecutor for the respondent, the Court made the following

THE HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO

CRIMINAL PETITION No.1792 of 2024

ORDER :

This Criminal Petition is filed seeking pre-arrest bail under Sec.438 of the Code of Criminal Procedure, 1973 ('Cr.P.C') to petitioner/A5 in Crime No.70/2023 of Ulindakonda Police Station, Kurnool District registered for the offence under Section 306 of Indian Penal Code.

2. Heard learned counsel for the petitioner/A5 and the learned Assistant Public Prosecutor representing the respondent/State.

3. The case of the prosecution is that:

The *defacto* complainant lodged a complaint before Ulindakonda Police Station on 09.6.2023 stating that on 08.6.2023, her husband Athar Fida Hussain was found dead by hanging to a tree in the fields beside Highway from Kurnool to Dhone, and that he might have committed suicide due to the disputes with A1 to A3 in relation to real estate business and also due to family disputes and harassment of their elder son-in-law/A4 and his 1<sup>st</sup> wife/A5 and also due to disputes with his own brothers-accused Nos.6 to 8 regarding sharing of ancestral properties. Hence, the complaint.

4. Learned counsel for the petitioner contends that there were matrimonial disputes. Based on the report of *defacto* complainant, Crime No.277/2021 of Banaganapalle Police Station was registered against A4 for the offence under Section 498-A, 420 and 417 read with 34 of IPC and Section 3 & 4 of Dowry Prohibition Act. Though the petitioner is no way concerned with the suicidal

death of the deceased, this case came to be registered against her, basing on the matrimonial disputes as referred above.

5. Learned counsel for the petitioner contends that A1 was granted anticipatory bail by this Court as per the orders in CrI.P.No.6013 of 2023, A3 was also granted anticipatory bail by this Court as per the orders in CrI.P.No.5244 of 2023 and A4 was also granted anticipatory bail by this Court vide order in CrI.P.No.9818 of 2023

6. Learned Assistant Public Prosecutor submitted that the investigation is pending.

7. Learned counsel for the petitioner submits that material placed on record does not show that the A5 abetted the commission of suicide. It is also submitted that to bring home the guilt of the offence under Section 306 of IPC, the prosecution has to show that the accused abetted the deceased and there must be a clear *mens rea* to commit the offence. In support of their case, the petitioner relied on the decision reported in **Sanju @ Sanjay Singh Sengar vs State Of Madhya Pradesh**<sup>1</sup> wherein the Hon'ble Apex Court held that even if the case of prosecution is accepted that appellant told the deceased to go and die that itself does not constitute the ingredients of instigation.

8. In support of the said contention, the learned counsel for the petitioner also relied on the decision reported in **Mohit Singhal and another v. State of Uttarakhand and others**<sup>2</sup> wherein it is held that the accused must have *mens rea* to instigate the deceased to commit suicide. The act of instigation

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<sup>1</sup> 2002(5) SCC 379

<sup>2</sup> Criminal Appeal No.3578 of 2023 dated 01.12.2023



must be intensity that it is intended to push the deceased to such a position under which he or she, has no choice, but to commit suicide. Such instigation must be in close proximity to the act of committing suicide. He further submitted that there is no relationship between the petitioner and the deceased and they are not residing in the same roof and the petitioner has no reason to interfere with the family affairs of the deceased. The only allegation made against the petitioner is that she did not choose to appear before the Court with a view to harass the deceased. Basing on the said allegation it is difficult to come to a conclusion that the petitioner abetted or aided for the commission of the suicide by the deceased.

9. Perused the material on record. To attract the offence under Section 306 of IPC, there should be instigation or abetment on the part of the accused.

It is apt to have a look at Section 306 of IPC, 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.'*

10. In the present case, as stated supra, going by the complaint, there is no instigation or abetment made by the petitioner which lead the deceased to commit suicide and hence, ingredients of Sec.306 IPC *prima-facie* not made out

11. In Criminal Application (Apl) No.547 of 2017 the **High Court of Judicature at Bombay, Nagpur Bench, Nagpur** held that '*an 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.'*

12. As per the observations made in **M.Mohan v. State of Tamilnadu**<sup>3</sup> while dealing with ingredients of Section 306 of IPC held as under:

*'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 born in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect act 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.'*

13. This Court has observed that the allegations made against the petitioner/A5 are only regarding the family disputes. Considering the nature of existing disputes between the petitioner and *defacto* complainant, even much prior to the suicidal death of the deceased and nothing on record to suggest that the petitioner approached, abetted or aided for commission of suicide by the deceased and in view of the law laid down by the Hon'ble Apex Court and considering the above facts and circumstances, this Court is inclined to grant anticipatory bail to the petitioner/A5, however subject to conditions.

14. In the result, the criminal petition is allowed.

- i. The petitioner/A5 is directed to surrender before the Station House Officer, Ulindakonda Police Station within two weeks from today and on such surrender, she shall be released on her furnishing a personal bond for Rs.25,000/- (Rupees twenty

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<sup>3</sup> (2011) 3 SCC 626

- five thousand only) with two sureties for the like sum each, to the satisfaction of the concerned Station House Officer;
- ii. After her release, the petitioner/A5 is directed to appear before the Station House Officer concerned whenever her presence is required; and
  - iii. The petitioner/A5 shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the Court or to any Investigating or Police Officer and shall cooperate with the investigating officer.

Pending miscellaneous applications, if any, shall stand closed.

SD/-B.CHITTI JOSEPH  
ASSISTANT REGISTRAR  
*ch*  
SECTION OFFICER

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Foi REGISTRAR

To,

1. The Station House Officer, Ulindakonda Police Station, Kurnool District.
2. One CC to Sri Sivaprasad Reddy Venati, Advocate [OPUC]
3. Two CCs to Public Prosecutor (AP) High Court of Andhra Pradesh [OUT]
4. One spare copy

CVSS





**HIGH COURT**

**TMR,J**

**DATED:20/06/2024**

**ANTICIPATORY BAIL ORDER**

**CRLP.No.1792 of 2024**

**ALLOWED**

