

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No. 4418 OF 2022

Tapan Mallik & others

..... Petitioners
Mr. S.K.Jena, Advocate

-versus-

State of Odisha

..... Opposite Party
Ms.S.Mishra, ASC

CORAM:
JUSTICE V. NARASINGH

ORDER
19.05.2022

Order No.

01.

1. This matter is taken up through Hybrid Mode.
2. Heard learned counsel for the parties.
3. The petitioners are seeking pre-arrest bail in connection with C.T. Spl. POCSO Case No. 33 of 2022 arising out of Binjharpur P.S. Case No. 278 of 2022 pending on the file of the learned Sessions Judge-cum-Spl. Judge, Jaipur for commission of offence under Sections 376(AB)/323/ 354/506/34 of the I.P.C. read with Section 6 of the POCSO Act.
4. Learned counsel for the petitioners has placed on record the 164 Cr.P.C. statements of the victim and submitted that since the victim has not alleged any overt act, so far so far the present petitioners are concerned, they are entitled to be released on bail.
5. Learned counsel for the State relying on the provisions of Sec. 438 sub-section (4) of the Cr.P.C. states that in view of the

statutory bar envisage under Section 438(4), the present ABLAPL is not maintainable.

6. For convenience of ready reference Section 438(4) Cr.P.C. is quoted hereunder:-

“438. Direction for grant of bail to person apprehending arrest-

XX XX XX XX XX XX XX

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section(3) of Section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code.”

7. On bare perusal of the said section it is seen that Section 438(4) of the Cr.P.C. will come into play in the case of an accused being accused of committing an offence under sections stated therein.

8. On perusal of the 164 Cr.P.C. statements placed on record it is seen that the accusation is against Chandan brother of petitioner Nos. 1 and 2 and son of petitioner No.3. He is admittedly not the petitioner before this Court.

9. Hence, this Court is of the considered view that there being no accusation of commission of offence against the petitioners for which the bar under Sec. 438(3) has been enacted, on surrendering within three weeks hence and moving for bail, the petitioners shall be released on bail by the learned court in seisin over the matter on such terms and conditions as deemed just and proper.

10. Accordingly, the ABLAPL is disposed of.

11. Urgent certified copy of this order be granted as per rule.

Dhal

*(V.Narasingh)
Judge*

