**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**ABLAPL No. 7447 of 2022**

***Srikanta Charan Rout*** .... ***Petitioner***
Ms.Anirudha Das,A***dvocate***

*-versus-*

***State of Odisha*** .... ***Opposite Party***
***Mr.P.C.Das,A.S.C.***

**CORAM:**

**JUSTICE A.K. MOHAPATRA**

**ORDER**

**Order No.** **08.08.2022**

3. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).

2. Heard learned counsel for the Petitioner and learned Additional Standing Counsel for the State. Perused the records.

3. It is submitted by the learned counsel for the Petitioner that final form has been submitted against accused Gokulananda Khatua for alleged commission of offence under sections 420, 294 of the Indian Penal Code read with Section 3 of the S.C. & S.T.(P.A.) Act. Further it is submitted that the Petitioner has not been charge sheeted in the present case. Further, it is submitted by the learned counsel for the Petitioner that protest petition has been filed for inclusion of the name of the present Petitioner and vide order dated 16.07.2009 learned court in seisin over the matter issued summons to the present Petitioner.

4. The present application has been filed under Section 438 Cr.P.C. for releasing the Petitioner on anticipatory bail. Considering the aforesaid submissions and considering the fact that the offence under section 3 of S.C. & S.T. (P.A.) Act is likely to be added against the Petitioner, the anticipatory bail application is not maintainable in view of the bar under Section 18 & 18-A of the S.C. & S.T.(P.A.) Act. The provision of Section 438 Cr.P.C. is not applicable to the case registered involving an offence under the S.C. & S.T. Act.

5. The aforesaid issue has also been examined by the Hon'ble Supreme Court of India in the matter of **Prathvi Raj Chauhan-vrs. Union of India and others,** reported in **2020(1) OLR (SC) 419.** In Paragraph-10 of the said judgment it has been held that provision of section 438 Cr.P.C. shall not apply to the case under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act **,** 1989. While saying so, the Hon'ble Supreme Court has further observed that if the complaint does not make out a prima facie case for applicability of the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the bar created by Sections 18 & 18-A of the Act shall not apply.

6. Further, this Court has also elaborately discussed the issue in the case of **Pramod Kumar Ray and others-vrs.-State of Odisha,** reported in **(2017) 67 OCR 309.** In the light of the principle laid down by this Court in **Pramod Kumar Ray** (supra), the present bail application is being disposed of with the following observations.

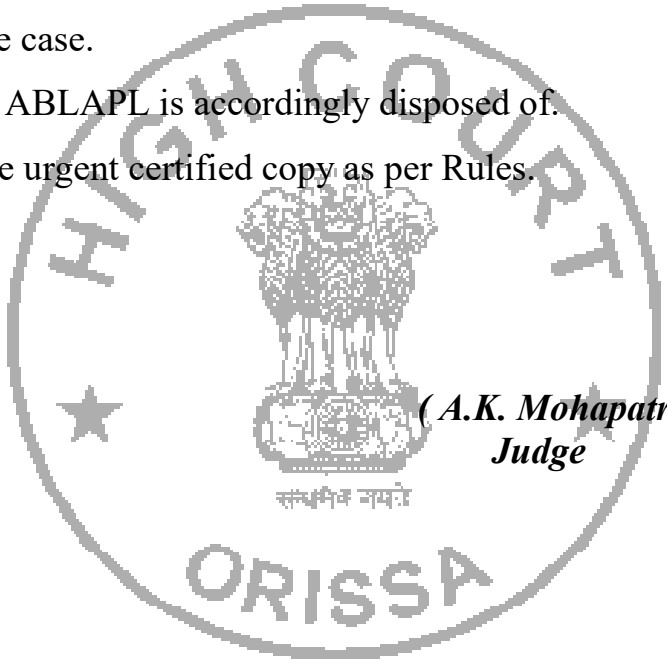
7. The Petitioner shall surrender before the learned J.M.F.C., Gondia in G.R.Case No.986 of 2005 arising out of Gondia P.S.Case No.169 of 2005 on or before 26.08.2022. Seven days before the Petitioner surrenders before the said Court, she or her counsel shall serve a copy of the bail application or such number of copies of the

bail application on the learned Public Prosecutor/Special Public Prosecutor, as required by him, for the purpose of notice to the victim or his/her counsel or dependent.

8. Further, it is directed that on advance intimation the case diary and other relevant materials be made available to the Court in seisin over the matter by the date of surrender. The learned Court in seisin over the matter is further directed to consider the case of the Petitioner in accordance with law and shall dispose of the bail application on the very same day. It is open to the learned court in seisin over the matter to grant interim bail to the Petitioner in appropriate case.

9. The ABLAPL is accordingly disposed of.

10. Issue urgent certified copy as per Rules.




RKS

***( A.K. Mohapatra )***
***Judge***