IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.8836 of 2022

Nilanchal Dora @ Gouda Nilanchal Dora .... ***Petitioner***

Mr. S.K. Mohanty, Advocate

-versus-

State of Odisha .... ***Opp. Party***

Mr. M.K. Mohanty, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

Order No. **02.08.2022**

01. 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. The present application has been filed under Section 438 Cr.P.C. for releasing the petitioner on anticipatory bail. However, in view of the bar contained under Sections 18 as well as 18-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the present application u/s 438 Cr.P.C. is not maintainable. The provisions of section 438 Cr.P.C. is not applicable to the case registered involving an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. 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.

5. 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.

6. The petitioner shall surrender before the learned Sessions Judge-cum-Special Judge, Ganjam, Berhampur in G.R. Case. No.25 of 2022(SC/ST(POA) Act) pending before the said court on or before 30.08.2022. Seven days before the petitioner surrender before the said Court, he 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 dependent.

7. It is submitted by learned counsel for the petitioner that on similar footing with the present petitioner, other co-accused persons have already been released on bail.

8. Taking into consideration the nature of the offence as alleged against the petitioner, it is directed that the petitioner shall be released on interim bail by the learned Sessions Judge-cum-Special Judge, Ganjam, Berhampur on the same day, he surrender in the aforesaid case, pending disposal of the bail application on merit, at the time of final hearing of the case, on such terms and conditions as deemed just and proper by maintaining the principles of parity, if

applicable.

9. The aforesaid order shall not be effective if the injuries sustained by the victim/victims are near fatal and victim/victims are still in bad shape. But, if the injuries are otherwise lesser and the victim/victims is/are hale and hearty, this observation shall not be effective and the petitioner can be granted interim bail.

10. The ABLAPL is disposed of accordingly.

Urgent certified copy of this order be granted on proper application.

(A.K. Mohapatra)
Judge

HIGH COURT
सत्यमेव जयते
ORISSA

Jagabandhu