IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No. 9725 of 2022

Ranjan Behera @ Biswaranjan Behera .... ***Petitioner***

Mr.Arijeet Mishra,A***dvocate***

-versus-

State of Odisha .... ***Opposite Party***

Mr.S.Mishra, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

Order No. **16.08.2022**

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

2. Heard learned counsel for the Petitioners 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 Petitioners on anticipatory bail. In view of the bar under Section 18 & 18-A of the S.C. & S.T.Act, the present application under Section 438 Cr.P.C. is not maintainable. 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.

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 Petitioners shall surrender before the learned Sessions Judge-cum-Special Judge, Keonjhar in Special Case No.27 of 2022 arising out of Ramachandrapur P.S.Case No.151 of 2022 on or before 06.09.2022. Seven days before the Petitioners surrender before the said Court, they or their 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.

7. 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 Petitioners 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 Petitioners in

appropriate case.

8. The ABLAPL is accordingly disposed of.

9. Issue urgent certified copy as per Rules.

RKS

(A.K. Mohapatra)
Judge