

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.9796 of 2022

Dusmanta Kar

....

Petitioner

Mr. Partha Sarathi Nayak, Advocate

-versus-

State of Odisha & another

....

Opposite Parties

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

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

16.08.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned Addl. Standing Counsel for the State. Perused the case record.
3. The present application has been filed under Section 438, Cr.P.C. for release of the petitioner on anticipatory bail.
4. It is submitted by learned counsel for the Petitioner that the Petitioner is an Advocate of Chhendipada Bar in the district of Angul. He further submits that, another group of advocates of the said Bar gave a call for cease work, which was opposed by the present Petitioner (Advocate), as a result of which the present Petitioner has been falsely implicated in the case alleging commission of offence under SC & ST (PO) Act. He further submits that this is a clear case of false implication of the present Petitioner (lawyer) by a group of lawyers.

5. However, in view of the bar under Section 18 as well as 18-A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, 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 Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. The aforesaid issue has also been examined by the Hon'ble Supreme Court of India in the matter of ***Prithvi Raj Chauhan vs. Union of India and others***, reported in ***2020(I) 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 & 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 & Scheduled Tribes (Prevention of Atrocities) Act, 1989, the bar created by Section 18 and 18-A of the Act shall not apply.

7. Further, this Court has also elaborately discussed the issue in the case of ***Pramod Kumar Ray and others vs. 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.

8. The Petitioner is directed to surrender before the learned Judge, Special Court, Angul in C.T. (Spl.) Case No.38 of 2022 corresponding to Chhendipada P.S. Case No.362 of 2022 within three weeks from today. Seven days before the Petitioner surrenders before that Court, he or his 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.

9. 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 court in seisin over the matter, on the same day, if they 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. Ground of parity, if canvassed by learned counsel for the Petitioner, shall also be taken into consideration by the learned Special Judge while disposing of the bail application of the Petitioner on merit.

10. The aforesaid order shall not be effective, if the injuries sustained by the victim/victims are near to fatal and the 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.

11. Accordingly, the ABLAPL is disposed of.

12. Urgent certified copy of this order be granted as per rules.

(A.K. Mohapatra)
Judge