

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.9861 of 2022

Uttam Kumar Bhoi and others ***Petitioners***
Mr. S. B. Jena, Advocate
-versus-
State of Odisha ***Opp. Party***
Mr. S. Patra, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

17.08.2022

Order No.

01. 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.
3. This is an application under Section 438, Cr.P.C. filed by the petitioners for anticipatory bail.
4. The petitioners are seeking pre-arrest bail in connection with C.T. Case No.47 of 2022, arising out of Kesinga P.S. Case No.301 of 2022 pending in the court of learned Sessions Judge-cum-Special Judge, Kalahandi, Bhawanipatna for commission of offence punishable under Sections 294/341/506/34, I.P.C. read with Section 3 of the S.C. and S.T. (PoA) Act and other allied offences.
5. It is submitted by learned counsel for the petitioners that allegation under S.C. and S.T. (PoA) Act is not made against the petitioner no.1-Uttam Kumar Bhoi, petitioner no.2-Rohit Bhoi @ Rohit Kumar Bhoi and petitioner no.3-Chita Bhoi @ Chitta Ranjan Bhoi. Therefore, no case under SC & ST (PoA) Act is made out

against the said three petitioners.

6. Considering the submissions made by learned counsel for the petitioners, the nature of allegation, gravity of offence and the facts of the case, I am not inclined to grant anticipatory bail to the petitioner no.1-Uttam Kumar Bhoi, petitioner no.2-Rohit Bhoi @ Rohit Kumar Bhoi and petitioner no.3-Chita Bhoi @ Chitta Ranjan Bhoi. However, it is directed that in the event the petitioner no.1-Uttam Kumar Bhoi, petitioner no.2-Rohit Bhoi @ Rohit Kumar Bhoi and petitioner no.3-Chita Bhoi @ Chitta Ranjan Bhoi surrender before the learned court in seisin over the matter within a period of three weeks from today in the aforesaid case, they shall be released on bail on such terms and conditions as would be deemed just and proper by the court in seisin over the matter.

7. So far allegation against petitioner no.4-Ganesh Bhoi is concerned, perusal of the F.I.R. it is observed that a case against the petitioner no.4 is made out for commission of offence under S.C. and S.T. (PoA) Act.

8. The present application has been filed under Section 438 Cr.P.C. for releasing the petitioners including the petitioner no.4-Ganesh Bhoi 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. So far petitioner no.4 is concerned. 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 in respect of the petitioner no.4 is being disposed of with the following observations.

6. The petitioner no.4-Ganesh Bhoi shall surrender before the learned Sessions Judge-cum-Special Judge, Kalahandi, Bhawanipatna in the aforesaid case pending before the said court on or before 19.09.2022. Seven days before the petitioner surrenders 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. Taking into consideration the nature of the offence as alleged against the petitioner no.4-Ganesh Bhoi, it is directed that the petitioner no.4-Ganesh Bhoi shall be released on interim bail by the

learned Sessions Judge-cum-Special Judge, Kalahandi, Bhawanipatna on the same day, he surrenders 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.

8. 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 no.4-Ganesh Bhoi can be granted interim bail.

9. The ABLAPL is accordingly disposed of.

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

