

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.11001 of 2022

***Kisan Behera @ Kishan @ Kishore
& Others***

.... ***Petitioners***

Mr. Lambodor Achari, Advocate

-versus-

State of Odisha

.... ***Opposite Parties***

Mr. Shashanka Patra, A.S.C.

**CORAM:
JUSTICE A.K.MOHAPATRA**

**ORDER
13.09.2022**

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioners and learned 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 petitioners on anticipatory bail. 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.
4. The aforesaid issue has also been examined by the Hon'ble Supreme Court of India in the matter of ***Prithvi Raj Chauhan vrs. 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.

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, Ganjam Berhampur, Ganjam in G.R. Case No.25 of 2022 (SC/ST) corresponding to Pattapur P.S. Case No.89 of 2022 within three weeks from today. Seven days before the Petitioners surrender before that 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 dependent.

7. Taking into consideration the nature of the offence as alleged against the Petitioners, it is directed that the Petitioners 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 Petitioners, shall also be taken into consideration by the learned Special Judge while disposing of the bail application of the Petitioners on merit.

8. 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 Petitioners can be granted interim bail.

9. Accordingly, the ABLAPL is disposed of.

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

(A.K. Mohapatra)
Judge

S.K.Parida

