

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No. 11239 of 2022

Jayanti Barik & others

....

Petitioners

Mr.Biyotkesh Mohanty, Advocate

-versus-

State of Odisha and another

....

Opposite Parties

Mr.S.Patra, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

15.09.2022

Order No.

- 01.
1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
 2. Heard learned counsel for the Petitioners and learned 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.
 4. It is submitted by the learned counsel for the Petitioners that the Petitioners are all ladies. Further, it is submitted that due to business rivalry they have been falsely implicated in the present case. It is also submitted by the learned counsel for the Petitioners that no case under section 3 of the S.C. & S.T.(P.A.) Act is made out against the Petitioner. In support of such contentions, learned counsel for the Petitioners, however submits that the occurrence took place

inside the house of the informant. Therefore, Section 3 of the Act may not be attracted to the facts of the present case. Further, the allegation under section 395 of the Indian Penal Code is vexatious and the same is not within the trial. In its entirety learned counsel for the Petitioners tries to impress upon the Court that the F.I.R. is a false one and outcome of a business rivalry of two groups only to harass and humiliate the Petitioners the F.I.R. has been lodged. It is submitted by the learned counsel for the Petitioners that a counter F.I.R. has been lodged by the Petitioners against the informant.

5. 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.

6. 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.

7. 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.

7. The Petitioners shall surrender and move an application for bail before the learned Special Judge, Champua in Special Case No.18 of 2022 arising out of Barbil P.S.Case No.200 of 2022 within a period of three weeks from today. Seven days before the Petitioner surrenders 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. Within the aforesaid period of three weeks, the Petitioners shall not be arrested in connection with the aforesaid case.

8. 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 Petitioner 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 Petitioner in appropriate case.

8. The ABLAPL is accordingly disposed of.

9. Issue urgent certified copy as per Rules.

RKS

(A.K. Mohapatra)
Judge