

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.12365 of 2022

Sahil Barik

....

Petitioner

Mr. L.N. Patel & B.K. Ragada, Advocates

-versus-

State of Odisha

....

Opposite Party

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

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

**ORDER
27.09.2022**

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the Petitioner and learned 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. Learned counsel for the Petitioner submits that the Petitioner is a juvenile, who has been implicated in this case. He further submits that there is case and counter case pending against the rival parties.
5. On perusal of the F.I.R. it appears that the allegation for commission of the offence under Section 3(a)(r)/3(1)(s)/3(2)(va) of the SC & ST (POA) Act, 1989 (Amendment Act, 2018) has been made against the Petitioner. 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.

6. 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.

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***.

8. However, liberty is granted to the Petitioner to approach the Juvenile Justice Board, in the event the Petitioner is found to be a juvenile as per Juvenile Justice Act. Accordingly, the Petitioner shall surrender before the learned Special Court, P.M.J.J.B., Bhubaneswar in connection with Pahala P.S. Case No.154 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 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. Ground of parity, if canvassed by learned counsel for the Petitioner, shall also be taken into consideration by the learned court in seisin over the matter 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