

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.13270 of 2022

Sk. Nijamuden *Petitioner*
Mr. Chandan Samantaray, Advocate
-versus-
State of Odisha and another *Opposite Parties*
Mr. P.C. Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
03.11.2022

Order No.

I.A. No.2163 of 2022

02. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the petitioner as well as learned counsel for the State.
3. In view of the submissions made, the order dated 17.10.2022 is hereby recalled. Accordingly, the I.A. stands allowed.

(A.K. Mohapatra)
Judge

ABLAPL No.13270 of 2022

03. 4. Heard.
5. The present application has been filed under Section 438, Cr.P.C. for release of the petitioner on anticipatory bail, in the case involving offence punishable under Sections 302/120-B/34, I.P.C.

read with Section 3(1)(r)(s)2(v) of the SC & ST (POA) Act.

6. It is submitted by the learned counsel for the Petitioner that the co-accused persons similarly situated with the present Petitioner have already been released on bail. It is also submitted by the learned counsel for the Petitioner that there is no allegation of assault against the present Petitioner in the F.I.R. However, it is further submitted that the allegation against the Petitioner in the F.I.R. is that he participated in the meeting where conspiracy took place.

7. 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.

8. 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.

9. 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.

10. The Petitioner shall surrender before the learned Presiding Officer, Special Court (SC & ST), Balasore in Spl. Case No.35 of 2022 arising out of Sahadevkhunta P.S. Case No.364 of 2021 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.

11. 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 Presiding Officer, Special Court (SC & ST), Balasore while disposing of the bail application of the Petitioner on merit.

12. Accordingly, the ABLAPL is disposed of.

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

(***A.K. Mohapatra***)
Judge