

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.14002 of 2022

Sk. Aeyup @ Sk. Eyup & Others ***Petitioners***
Mr. Sk. Zafarulla, Advocate

-versus-

State of Odisha ***Opposite Party***
Mr. M.K. Mohanty, A.S.C.

CORAM:
JUSTICE CHITTARANJAN DASH

ORDER
02.11.2022

Order No.

- 01.
1. Heard learned counsel for the Petitioners and the State.
 2. This is an application for bail U/s.438 Cr.P.C. filed by the Petitioner in anticipation of arrest for their alleged involvement in the offences U/s.148/324/325/307/153-A/149, I.P.C. and Sections 3(1)(r)(s)/3(2)(v) of the SC & ST (PoA) Act.
 3. Learned Counsel for the Petitioner referring to the orders passed in G.R. 97 of 2021 pending in the Court of Spl. Judge, Mayurbhanj at Baripada, C.T. Case No.964 of 2021 of the Court of JMFC, Betnoti pursuant to the orders passed by this court contended that this court has passed orders to consider the application for bail and the co-accused persons namely Rafagat @ Sk. Rephaket, Sk. Heki @ Sk. Hekimuddin, Sk. Seduru, Sk. Chuturu, Sk. Abdulu, Bekrudi @ Mallick Bekhiruddin have since been released on bail and canvassed for release of the present petitioners. The learned

Counsel has not filed the orders in ABLAPL No.319 of 2022 thereby this court is unable to ascertain if the said orders refers to the case arising out of the Baisinga P.S. Case No.373 of 2021 basing on which the present petitioners seek the bail. This is because the order that the learned Counsel submits regarding a counter case to have been filed by the Petitioners may be referring to the Baisinga P.S. Case No.371 of 2021 referred to in the said G.R. Case.

4. Be that as it may, in view of the bar under Sections 18 and 18-A of the SC & ST (PA) Act, the present application under Section 438, Cr.P.C. is not maintainable. As is said the issue has been examined by the Apex Court in the matter of ***Prithvi Raj Chauhan v. Union of India and Others, reported in (2020) 1 OLR SC 419.*** In paragraph-10 of the said judgment, it has been held that the provision of Section 438, Cr.P.C. shall not apply to the case involving offence under SC & ST (PA) Act, 1989. While saying so the Apex Court has further observed that, if the complaint does not make out a prima facie case or applicability of the provision of the Act, the bar created by Sections 18 & 18-A of the Act shall not apply.

5. Further, this Court in ***Pramod Kumar Ray and others v. State of Orissa, reported in (2017) 67 OCR 309,*** in the light of the principles laid down by the Apex Court, reiterated the same principles. Hence, this present application is disposed of with the following observation.

- (i) In the event the Petitioners surrender before the learned 2nd Addl. Sessions Judge-cum-Special Judge, Baripada in C.T. Case No.97 of 2021 arising out of Baisinga P.S. Case No.373 of 2021 within three weeks from today, before the court in seisin over the matter the Petitioners shall serve copy of the bail application on the learned PP/Special PP as required by him for the purpose of notice to the victim or his/her counsel or dependent.
- (ii) It is further directed that, on advance intimation, the Case Diary and other relevant materials be made available to the concerned court by the date of surrender.
- (iii) The learned Court is further directed to consider the case of the Petitioners in accordance with law and shall dispose of the bail application on the very same day itself, strictly on its own merit looking however to the fact if the co-accused persons in similar footing have since been released on bail. In the circumstance, the Court is not precluded from granting any interim protection to the Petitioners in appropriate case, keeping in view the facts and circumstances of the case, upon his satisfaction and not in routine manner.

6. The ABLAPL is disposed of accordingly.

(Chittaranjan Dash)
Judge