

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.14465 of 2022

***Kunja Bihari Budek @ Sana
Budek and others***

.... Petitioners

Mr. T.K. Sahu, Advocate

-versus-

State of Odisha and another

.... Opp. Parties

Mr. M.K. Mohanty, ASC

**CORAM:
JUSTICE CHITTARANJAN DASH**

**ORDER
22.11.2022**

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 Petitioners in anticipation of arrest for their alleged involvement in the offences U/s..147/148/294/323/506/149 IPC read with Section 3(1) (r) (s)/3(2)(va) of the SC & ST (POA) Act.
3. 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. The provision of Section 438, Cr.P.C. having no application to the case, as the offence involves various Sections of SC & ST (PA) Act. 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.

4. 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 Addl. Sessions Judge-cum-Special Judge, Titilagarh in Special G.R. Case No.51 of 2022 arising out of Saintala P.S. Case No.310 of 2022 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 application on the very same day itself, strictly on its own merit. In this 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. However it is made clear that the observations/directions made herein shall not be considered in affirmative.

5. The ABLAPL is disposed of accordingly.

(Chittaranjan Dash)
Judge

KC Bisoi

