

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.14650 of 2022

***Sidhartha Kumar Chhotray &
Others***

.... ***Petitioners***
Mr. D.P. Dhal, Sr. Advocate
& Mr. B.S. Dasparida, Advocate

-versus-

State of Odisha

.... ***Opp. Party***
Mr. M.K. Mohanty, A.S.C.

**CORAM:
JUSTICE CHITTARANJAN DASH**

**ORDER
30.11.2022**

Order No.

- 01.
1. Heard learned counsel for the Petitioners and the State.
 2. Perused the case record. By means of this application, the Petitioners seek grant of bail U/s.438 Cr.P.C. in apprehension of arrest for their alleged involvement in the offences U/s. 498-A/333/506/34, I.P.C. and Sections 3(1)(r) & 3(2)(va) of the SC & ST (PoA) Act.
 3. It is submitted by the learned counsel for the Petitioners that the offences under Sections 3(1) (r) & 3(2) (va) of the SC & ST (PoA) Act cannot be brought into application, in as much as the dispute is between the husband and the wife, and in view of the matrimonial dissension the allegations appearing against the present Petitioners are far from truth and such allegations have been made only to improve the gravity of the case. According to the learned counsel, since the Petitioners are apprehending arrest have moved in the present.

4. Learned Addl. Standing Counsel on the other hand vehemently opposed the contentions raised by the learned counsel for the Petitioners and submitted that the materials available on record prima facie implicates the present Petitioners in the offences alleged including one under Sections 3(1)(r) & 3(2)(va) of the SC & ST (PoA) Act, and as such the Petitioners cannot get any immunity but to face the rigor of law.

5. It is no more *res-integra* that the caste of a person is determined by his/her birth and does not change on marriage. In the instant case the specific allegation, as reveals from the F.I.R. is attributable to the present Petitioners squarely bring the Petitioners within the ambit of the offences U/s. 3(1) (r) & 3(2) (va) of the SC & ST (PoA) Act.

6. Coming to the merit of the Application it is apt to mention that in view of the bar U/s. 18 and 18-A of the SC & ST (PA) Act, the present application U/s. 438, Cr.P.C. is not maintainable. The issue has been examined by the Apex Court in the matter of ***Prithviraj 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.

7. 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 1st Addl. District & Sessions Judge-cum-Special Judge, Khurdha in Special Case No.101 of 2022 corresponding to Nirakarpur P.S. Case No.212 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.

8. 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. The learned court, however, is not precluded from granting any interim protection to the Petitioners in appropriate circumstance.

9. The ABLAPL is disposed of accordingly.

(Chittaranjan Dash)
Judge