

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No. 14750 of 2022

Rakesh Behera and another* *Petitioners

Mr. Chiranjib Rout, Advocate

-versus-

State of Odisha* *Opp. Party

Mr. Manoj Kumar Mohanty, ASC

**CORAM:
JUSTICE CHITTARANJAN DASH**

ORDER

19.12.2022

Order No.

- 02.
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 apprehension of arrest for their alleged involvement in the offences U/s. 147/148/294/341/323/307/336/427/506/149 of IPC read with Section 3(1)(r)(s)/3(2)(va)/3(2)(v) of SC and ST (PA) Act.
 3. Learned Counsel for the Petitioners does not want to press the bail application in respect of Petitioner No. 2. Accordingly, the bail application in respect of Petitioner No. 2 is dismissed as not pressed.
 4. So far as Petitioner No. 1 is concerned, learned Counsel for the Petitioners submits that there is case and counter-case arising out of the same incident.

5. Learned counsel for the State submits that there is no criminal antecedent standing to the credit of the Petitioner No.1

6. 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 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.

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 Petitioner No. 1 surrenders before the learned Session Judge-Special Judge, Talcher in Talcher P.S. Case No. 839 of 2022 corresponding to C.T. Spl. Case No. 52 of 2022 within three weeks from today, before the court in seisin over the matter, the Petitioner No. 1 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 Petitioner No. 1 in accordance with law and shall dispose of the application on the very same day itself, strictly on its own merit. In the circumstance, the Court is not precluded from granting any interim protection to the Petitioner No. 1 in appropriate case, keeping in view the facts and circumstances of the case, upon his satisfaction and not in routine manner. In no case, the court concerned shall be influenced by the observations of this court presuming the direction passed here as an affirmative.

8. The ABLAPL is disposed of accordingly.

(Chittaranjan Dash)
Judge

B.K Sahoo/AKPradhan