

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.14888 of 2022

Sk. Akbar Ali and another

....

Petitioners

Mr. D.K. Sahoo, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. S. Patra, ASC

CORAM:

JUSTICE CHITTARANJAN DASH

ORDER

08.12.2022

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.147/148/323/307/452/506/294/149 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 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 District & Sessions Judge-cum-Special Judge, Kendrapara in T.R. No.46 of 2021 arising out of Pattamundai P.S. Case No.155 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 application on the very same day itself, strictly on its own merit keeping in view if the Petitioner has criminal antecedent. In this circumstance, the Court is not precluded from granting any interim protection 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

