

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.15070 of 2022

***Siba Tanty @ Shiba Tanty &
another***

....

Petitioners

Mr. Bibhu Prasad Mohanty, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. Shashanka Patra, A.S.C.

CORAM:

JUSTICE CHITTARANJAN DASH

ORDER

13.12.2022

Order No.

- 01.
1. Heard learned counsels 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. 341/307/294/506/34, I.P.C., Section 25 of Arms Act and Sections 3(1)(r)(s) & 3(2)(v) 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 ***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.

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 Sessions Judge-cum-Spl. Judge (SC/ST), Sundargarh in Special G.R. Case No.197 of 2022 arising out of Town P.S. Case No.365 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.

5. 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. Learned court shall remain alive to the narration made in the F.I.R. only to the extent that there was expression regarding the caste without specifying the nature of aspersions. The Court is also not precluded from granting any interim protection to the Petitioners keeping in view the aforesaid facts.

6. The ABLAPL is disposed of accordingly.

(Chittaranjan Dash)
Judge

S.K. Parida

