

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.15136 of 2022

Basudeb Naik @ Basu

....

Petitioner

Mr. Bijaya Kumar Sahoo, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. Shashanka Patra, A.S.C.

CORAM:

JUSTICE CHITTARANJAN DASH

ORDER

14.12.2022

Order No.

01.

1. Heard learned counsels for the Petitioner and the State.

2. Perused the case record. By means of this application, the Petitioner seeks grant of bail U/s.438 Cr.P.C. in apprehension of arrest for his alleged involvement in the offences U/s. 341/294/323/354/307/34, I.P.C. and Sections 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii), 3(2)(v) & 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 ***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 Petitioner surrenders before the learned A.D.J., Bhanjanagar in Spl. G.R. Case No.26 of 2022 arising out of Jagannathprasad P.S. Case No.140 of 2022 within three weeks from today, before the court in seisin over the matter the Petitioner 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 Petitioner in accordance with law and shall dispose of the application on the very same day itself, strictly on its own merit. The Court is also not precluded from granting any interim protection to the Petitioner keeping in view the aforesaid facts.

6. However, this order is subject to verification of criminal antecedents of the Petitioner as well as verification of Injury Report. If more than one antecedents of similar nature is found

against the present Petitioner or the injuries caused to the victim are found to be grievous in nature, this order shall not be given effect to.

7. The ABLAPL is disposed of accordingly.

(Chittaranjan Dash)
Judge

S.K. Parida

