

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.15961 of 2022

Pankajini Patra and others

Petitioners
....
Mr. A.P. Bose, Advocate

-versus-

State of Odisha

Opp. Party
....
Mr. Debasis Biswal, ASC

**CORAM:
JUSTICE CHITTARANJAN DASH**

**ORDER
21.12.2022**

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.341/294/354/380/427/323/506/34 IPC read with Section 3(1) (r) (s)/3(2)(va) of the SC & ST (POA) Act.
3. Learned counsel for the Petitioners submits that the offence under Section 3(1) (r) (s)/3(2)(va) of the SC & ST (POA) Act, 1989 cannot be attracted in the instance case in view of the decisions of the Apex Court passed in Criminal Appeal No.1283 of 2019 and Criminal Appeal No.707 of 2020 respectively. The factual background of the cases in the said decisions is distinguishable to the facts and circumstances of the present case in order to prima facie hold the applicability of the offence.

4. In the aforesaid decisions, the matters have been taken while deciding the appeals on merit. Consequently, the decisions referred to cannot be taken advantage by the Petitioners at this stage.

5. However, the matter being one involving the Petitioners under the SC & ST (POA) 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.

6. 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 Judge-cum-Special Judge, Special Court, Bhubaneswar in Pahala P.S. Case No.189 of 2022 corresponding to T.R. Case No.441 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.
- (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 Petitioners have 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.

7. The ABLAPL is disposed of accordingly.

(Chittaranjan Dash)
Judge