

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.16047 of 2022

***Kailash @ Kailash Chandra
Padihary and another***

....

Petitioners

Mr. D. K. Sahoo, Advocate

-versus-

State of Odisha and another

....

Opp. Parties

Mr. S. Mishra, ASC

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

22.12.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard learned counsel for the Petitioners and learned Additional Government Advocate for the State-Opposite Party No.1. Perused the records.
3. The present application has been filed under Section 438 Cr.P.C. for releasing the Petitioners on anticipatory bail for alleged commission of offences under Section 341/294/323/354/34 of I.P.C. read with Sections 3(1)(r)(s)/3(2)(va) of S.C. & S.T. (P.O.A.) Act, 1989. However, in view of the bar contained under Sections 18 as well as 18-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the present application u/s 438 Cr.P.C. is not maintainable. The provisions of section 438 Cr.P.C. is not applicable to the case registered involving an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The aforesaid issue has also been examined by the Hon'ble Supreme Court of India in the matter of **Prathvi Raj Chauhan-vrs. Union of India and others**, reported in **2020(1) OLR (SC) 419**. In Paragraph-10 of the said judgment it has been held that provision of section 438 Cr.P.C. shall not apply to the case under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. While saying so, the Hon'ble Supreme Court has further observed that if the complaint does not make out a prima facie case for applicability of the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the bar created by Sections 18 & 18-A of the Act shall not apply.

5. Further, this Court has also elaborately discussed the issue in the case of **Pramod Kumar Ray and others-vrs.-State of Odisha**, reported in **(2017) 67 OCR 309**. In the light of the principle laid down by this Court in **Pramod Kumar Ray** (supra), the present bail application is being disposed of with the following observations.

6. The Petitioners shall surrender before the learned Sessions Judge-cum-Special Judge, Kendrapara in T.R. Case No.192 of 2022 within three weeks. Seven days before the Petitioners surrenders before the said Court, they or their counsel shall serve a copy of the bail application or such number of copies of the bail application on the learned Public Prosecutor/Special Public Prosecutor, as required by him, for the purpose of notice to the victim or his/her counsel dependent.

7. Taking into consideration the nature of the offence as alleged against the Petitioners, it is directed that the Petitioners shall be released on interim bail by the learned Sessions Judge-cum-Special Judge, Kendrapara on the same day, they surrender in the aforesaid case, pending disposal of the bail application on merit, at the time of

final hearing of the case, on such terms and conditions as deemed just and proper.

8. The aforesaid order shall not be effective if the injuries sustained by the victim/victims are near fatal and victim/victims are still in bad shape. But, if the injuries are otherwise lesser and the victim/victims is/are hale and hearty, this observation shall not be effective and the Petitioners can be granted interim bail.

9. The ABLAPL is disposed of.

10. Issue urgent certified copy as per Rules.

