



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**ABLAPL No. 11258 of 2024**

***Dukha @ Duhkha Tirkey* .... *Petitioner***

Mr. U.S. Patel, Advocate

***-versus-***

***State of Odisha & Another* .... *Opp. Parties***

Mr. D. Biswal, ASC

**CORAM:**

**THE HON'BLE MR. JUSTICE CHITTARANJAN DASH**

**Order No.**

**ORDER  
30.10.2024**

01.      1. Heard learned counsel for the Petitioner and the State.
2. This is an application for bail U/s.438 Cr.P.C. filed by the Petitioner in anticipation of arrest for his alleged involvement in the offences Under Sections. 147/148/307/457/380/294/506/323/427/149 of IPC and Sections 3(1)(r)/3(1)(s)/ 3(2)(v) of SC & ST (POA) Act.
3. Learned counsel for the Petitioner submits that the Petitioner belongs to the Scheduled Tribe community and the offence U/s. 3(1)(r)/3(1)(s)/ 3(2)(v) of SC & ST (POA)



Act shall not be applicable to him. He, however, did not file any document supporting his submission

4. 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.

5. 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 Special Judge-Cum-Dist. & Sessions Judge, Sundargarh, relating to Special G.R Case No. 78 of



2023 arising out of Talsara P.S Case No.126 of 2023 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.

(iii) 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. In the circumstance, the Court is not precluded from granting any interim protection to the Petitioner in appropriate case, keeping in view the facts and circumstances of the case, upon his satisfaction and not in routine manner.

6. The court shall apply its wisdom in allowing or rejecting application keeping in view the gravity of offences and severity of punishment. In the event any document is produced with regard to the caste of the



Petitioner the same be considered in accordance with law.  
The ABLAPL is disposed of accordingly.

***(Chittaranjan Dash)***  
***Judge***

*Bijay*

**Signature Not Verified**

Digitally Signed  
Signed by: BIJAY KETAN SAHOO  
Reason: Authentication  
Location: HIGH COURT OF ORISSA  
Date: 30-Oct-2024 18:54:41

