

IN THE HIGH COURT OF ORISSA AT CUTTACK

ABLAPL No.5837 of 2023

**Sonali Pradhan @ Sonalika  
Pradhan and another**

....

**Petitioners**

Mr. Srikanta Panda, Advocate

-versus-

**State of Odisha**

....

**Opp. Party**

Mr. D. Biswal, ASC

**CORAM:  
JUSTICE CHITTARANJAN DASH**

**ORDER  
07.07.2023**

**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.376(2)(n)/506/34 of IPC and Sections 3(2)(v)(a)/3(1)(w)(i) of SC & ST (PoA) Act in connection with UPD, Bhubaneswar Mahila PS Case No.79 of 2023 corresponding to TR Case No.272 of 2023 pending in the court of learned District and Sessions Judge, Khurda at Bhubaneswar.
3. It is submitted by learned counsel for the Petitioners that Sonali Pradhan @ Sonalika Pradhan-Petitioner No.1 herself happened to be from SC community and as such the offence under the Atrocity act is not applicable to her. In order to prima facie

substantiate his submissions, the learned counsel for the Petitioners filed a photo copy of the Caste Certificate. It is further submitted by him that there is no aspersion against the caste by the Petitioner No.2 and as such the Petitioners are not amenable to offence under SC and ST (P&A) Act.

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 Petitioners surrender before the learned District and Sessions Judge, Khurda at Bhubaneswar in UPD, Bhubaneswar Mahila PS Case No.79 of 2023 corresponding to TR Case No.272 of 2023 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, the Case Diary and other relevant materials be made available to the concerned court as far as practicable by the date of surrender.

(iii) The learned Court is further directed to consider the case of the Petitioners in accordance with law strictly on its own merit applying its wisdom and shall dispose of the application on the very same day if there be no other legal impediment. In the 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 and not in routine manner.

6. In no case, the court concerned shall be influenced by the observations of this court presuming the direction passed here in is directory, peremptory or in affirmative. The court shall act independently in allowing or rejecting the application on its own. The ABLAPL is disposed of accordingly.

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

AKPradhan