

CRM (DB) 4274 of 2022

In Re: - An application under Section 439(2) of the Code of Criminal Prodecure

And

In the matter of: **Syed Shamsul Arefin,**

....petitioner.

Adv. Syed Shamsul Arefin,

... petitioner in person.

Adv. Uday Sankar Chattopadhyay,

Adv. Rajashree Tah,

Adv. Trisha Rakshit,

...for the O.P. no.2.

Adv. Swapan Banerjee,

Adv. Purnima Ghosh,

...for the State.

Petitioner prays for cancellation of anticipatory bail granted by the Sessions Court by order no. 2 dated November 24, 2022.

Petitioner appears in person and submits that, the petitioner was entitled to money in respect of land acquisition proceedings. A certificate was issued by the private opposite party identifying a different person as the petitioner for the purpose of receipt of such money. The learned Court granting anticipatory bail did not consider the materials in the case diary in its proper perspective and therefore, proceed to grant anticipatory bail. Such order of anticipatory bail suffers from perversity and needs to be interfered with.

Affidavits filed in Court be taken on record.

Learned counsel for the private opposite party submits that, the private opposite party acted as an Advocate in identifying a person. He draws the attention of the Court to the affidavit portion. He submits that only the name of the grandfather of the person entitled to the money is wrong and the police station is different. He submits that a report should be called for from the office of the Land Acquisition Department so as to find out whether the money was parted with as liberty of an Advocate and a citizen is involved. Therefore, the order granting anticipatory bail should not be recalled.

The private opposite party is an Advocate. As an Advocate he identified a person knowing such person not to be the actual person entitled to receive money. It is now well documented that, person whom the private opposite party identified is not the actual person entitled to receive the money.

The issue is not whether any money was actually received by such identified person or not. The issue is one of identification by an Advocate in the capacity as an Advocate. An Advocate owes a responsibility to the Court. He also owes the responsibility to his client.

In the facts of the present case, the private opposite party acting as an Advocate persuaded revenue authority to accept a person who is not the actual person to receive money to be the recipient.

In such circumstances, the Advocate misled the revenue authority. He was part of the plot to cause the revenue authority to part with money in relation to land acquisition proceedings to person who was not entitled thereto.

In the facts of the present case it cannot be said that the private opposite party was himself misled. Therefore, he proceeded to make erroneous statement to mislead the revenue authority.

In such circumstances, the requirement of custodial interrogation of the private opposite party cannot be overlooked.

His actions as an Advocate should also be looked into by the appropriate authority including the Bar Council.

In such circumstances, we cancel the order granting anticipatory bail to the petitioner by the Sessions Court on November 24, 2022 and all consequential steps taken thereon. The private opposite party will surrender forthwith. In default, the jurisdictional Court should take appropriate steps against him.

C.R.M. (DB) 4274 of 2022 is disposed of accordingly.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

