

10.05.2024
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Ct. No. 29
S.D.

C.R.M.(DB) 243 of 2024

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

And

In Re : **Md. Idris**

..... petitioner

Mr. Tarique Quasimuddin

Ms. Zainab Tahur

...for the petitioner

Mr. Arindam Sen

Ms. Puspita Saha

...for the State

Mr. Farooque Ali

..for the O.P. No. 2.

Petitioner seeks cancellation of Order No. 5 dated November 29, 2023 passed in Criminal Miscellaneous Case No. 5037 of 2023.

Learned advocate appearing for the petitioner submits that a construction is being conducted on the basis of a sanctioned plan which bears signatures of two persons who were dead at the time when the alleged sanction was taken. He submits that, the private opposite party is guilty of cheating and perpetuating fraud. Learned Jurisdictional Court did not consider the materials in the case diary appropriately. The gravity of the offence was not taken into consideration. Consequently, the impugned order stands vitiated.

Learned advocate appearing for the State draws the attention of the Court to the materials in the case diary.

Learned advocate appearing for the private opposite party submits that his client entered into a development agreement with a private party who is still alive. He denies the allegations of forgery, fraud and cheating.

There exists a sanctioned building plan which bears signatures of two persons who expired much prior to the sanction of the building plan being granted by the Kolkata Municipal Corporation.

Therefore, one statutory authority was misled in granting sanctioned building plan.

In the eyes of law, in our view there is no sanctioned building plan at all as the sanctioned building plan contains signatures of persons who expired much prior to the application for grant of the sanction.

State and the petitioner before us are at liberty to inform Kolkata Municipal Corporation with regard to this order and also to the fact that there does not exist any sanctioned building plan in respect of the premises in question. On receipt of suchs communication, Kolkata Municipal Corporation will take immediate steps in accordance with law with regard to the building in question.

Material facts and gravity of the offence and the involvement of the private opposite party were not taken into consideration by the learned Judge while granting anticipatory bail to the private opposite party. Learned Judge proceeded on the basis that there was no compelling evidence to show direct

involvement of the private opposite party in manufacturing and preparing forged documents.

With respect, the sanctioned plan itself which bears the signatures of two persons who long expired before the date of application for sanction, are compelling enough materials on record to show that the sanctioned building plan was procured. Private opposite party being a builder, acting on such building plan is complicit in manufacturing and preparing forged documents.

In such circumstances, we cancel the anticipatory bail granted to the private opposite party on November 29, 2023. All consequential steps taken subsequent thereto are also cancelled. Private opposite party will surrender before the Jurisdictional Court within a fortnight from date. In default, Jurisdictional Court will take appropriate steps.

C.R.M. (DB) 243 of 2024 is allowed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)