

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 211 OF 2017

Abdul Razzak S/o Mohammed Shaikh. ... Applicant.
Versus
The State of Maharashtra & anr. ... Respondents.

Ms. Priyanka Ghosh, advocate for Applicant.

Mrs. P.P. Shinde, APP for State.

Mr. Jadhav, Police Naik, Samata Nagar Police Station.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : FEBRUARY 3, 2017**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP.

2 On 25/1/2017 an application filed by the present applicant under section 438 of the Code of Criminal Procedure, 1973 was argued on merits by advocate Ms. Sajida Shaikh. Upon query made

by this Court, she had candidly stated that she happens to be wife of the applicant Abdul Razak Mohamed Shaikh. When this Court was not inclined to grant relief, the learned Counsel had submitted that the applicant would surrender before the concerned Magistrate on or before 31/1/2017 and therefore, the applicant was protected till 5p.m. of 31/1/2017. It is pertinent to note that on 2/2/2017, the applicant has filed subsequent application under section 438 of the Code of Criminal Procedure, 1973. It is apparent on the face of the record that the applicant has not abided by the undertaking given to this court on 25/1/2017.

3 The learned Counsel appearing for the applicant submits that the wife of the applicant, who was arguing the matter was under stress and therefore, had submitted that the applicant would surrender before the Magistrate although she had no instructions to that effect.

4 Today, the learned Counsel is seeking the relief of recalling the order dated 25/1/2017, but there is no prayer clause to that effect. Instead, the prayer clause is to grant bail in the event of arrest. Filing of such application after giving an undertaking that the applicant would surrender before the concerned magistrate is an abuse of process of law. The application stands dismissed on merits as well as on the ground that the undertaking given by the applicant was not abided by the applicant. The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)