

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

CRIMINAL APPLICATION No.1505 OF 2018

Mr.Ahmed Hussain Mangru Hussain Siddequi ... Applicant

Vs.

The State of Maharashtra ... Respondent

Ms.Sonal Parab i/b Rajeev Sawant & Associates for the Applicant

Mr.A.R. Patil, APP, for the Respondent – State in APL/1505/2018

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JANUARY 7, 2019

P.C.:

1. In this criminal application, the applicant prays for quashing and setting aside the order of proclamation dated 17.10.2018 issued by the Sessions Court, Thane in O.W. No.449 of 2018.
2. The only contention raised by the learned Counsel for the applicant is that the proclamation under section 82 of Criminal Procedure Code was issued without following proper procedure i.e., without issuing the warrant of arrest. In support of her submission, the learned Counsel relied on the judgment of a learned Single Judge in the case of **Usha Mishra vs. State of**

Bihar & Ors.¹ The learned Counsel has submitted that the applicant has filed Anticipatory Bail Application on 2.8.2018 and it was rejected on 6.9.2018. She has submitted that the Investigating Officer was aware of the filing of the Anticipatory Bail Application by the applicant/accused and yet, he was shown as absconding.

3. Learned Prosecutor produced a carbon copy of the arrest warrant issued on 18.8.2018 by the learned JMFC, Bhiwandi against the present accused. The police have submitted a report that this applicant/accused was not found and thereafter, the learned JMFC issued proclamation on 17.10.2018. Thus, the procedure requiring issuance of arrest warrant prior to issuance of order of proclamation, was complied with.

4. In the case of **Usha Mishra (supra)**, the learned Single Judge of the Patna High Court while dealing with the procedure laid down under section 82 of the Criminal Procedure Code has observed that the procedure of law is established, which alone has to be followed. This is a settled principle of law. In the case of **Usha Mishra (supra)**, a false statement was made by the

¹ MANU/BH/0825/2006

Investigating Officer before the learned JMFC and before the learned Sessions Court where the Anticipatory Bail Application filed by the accused was pending. Pendency of an Anticipatory Bail Application cannot be considered as a permission to the accused to remain absent from the Judicial Magistrate First Class unless there is a protection granted to the accused by the Court dealing with the Anticipatory Bail Application.

5. Thus, in view of this, there is no substance in the present application and it is, therefore, dismissed.

(MRIDULA BHATKAR, J.)