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

BAIL APPLICATION NO. 820 OF 2017

Faiyaz Wasim Ahmed Shaikh & Anr.

.. Applicants

Vs.

State of Maharashtra

.. Respondent

Mr. Ram Upadhyaya i/b. Law Competere Consultus for the Applicant.

Mrs. P. P. Shinde APP for the State/Respondent.

Mr. Sunil Kishor Kadam, PI, Wadala T.T. Police Station.

CORAM : A.S. GADKARI, J.

DATE : 2nd MAY, 2017.

P. C. :

1. This is an application under Section 439 of the Code of Criminal Procedure for bail in C. R. No. 498 of 2016 dated 20.11.2016 registered with Wadala T.T. Police Station under Sections 307, 353, 332, 506(2), 427 read with 34 of the Indian Penal Code, and under Sections 4 and 25 of the Indian Arms Act and under Section 37(3) of the Mumbai Police Act.

2. The First Information Report is lodged by Shri Sandip Govind Mane, Police Sub-Inspector then attached to Wadala T. T. Police Station, Mumbai. It is the prosecution case that on 19.11.2016 the said police officer along with his staff consisting of police constables were performing the duty of patrolling within the jurisdiction of the said police station. At about 3.15 a.m. of 20/11/2016 two persons namely, Mohd. Naseem Khan and Shaharukh Khan approached the patrolling party and informed that

the applicants along with other accused persons were assaulting their brother Moin with the aid of sword. The first informant, police officer, along with his staff immediately rushed to the said spot and tried to rescue the said Moin from the clutches of the applicants. The applicants then questioned the authority of the police officer and assaulted him with iron rod and sword. When the applicants tried to assault the police officer with sword on his head, he avoided the said blow and held the sword in his right hand. At that time applicant No.1 instigated his brother Sadique i.e. applicant No.2 and told him that not to leave the police and kill them. When the said fight was going on, people from the neighbourhood came and helped the police. It appears that the applicants thereafter were successful in running away from the scene of offence. After lodgment of FIR, the applicants came to be arrested on 21.11.2016. After completion of investigation, the police have submitted charge-sheet.

3. Learned counsel for the applicants submitted that the applicants have been falsely implicated in the present crime. Prosecution case as propounded is false and fabricated. He submitted that the concerned police officer has no concern to enter in the premises of the applicants and to rescue the alleged victim from the clutches of the applicants. He has submitted that the police have not recorded the statement of the said Mohd. Naseem Khan who called the police at the said scene of offence. He has submitted that as of today the police have completed the investigation and already submitted the charge-sheet. In

support of his case, he relied upon a decision of the Supreme Court in the case of Sanjay Chandra Vs. CBI, (2012) 2 SCC 382. He therefore prayed that the applicants may be released on bail.

4. I have perused the charge-sheet annexed to the application. A bare perusal of the charge-sheet would reveal that the applicants have scant respect towards the law enforcing agency. The applicants have dared to assault a police officer who was performing his lawful duty. The injury certificate issued by the L.T.M.G. Hospital, Sion, Mumbai would reveal that the injured police officer had received two injuries with sharp weapon. The other constable who tried to rescue the police officer had also received injury on his neck with sharp edged weapon. The police have recovered a sword and iron rod from the applicants. Applicant No.1 Faiz is also involved in two other crimes namely, C. R. Nos. 720 of 2014 u/s 324, 323, 504 of the Indian Penal Code and 289 of 2015 u/s 325, 323, 504, 506 r/w 34 of the Indian Penal Code, registered with the Wadala T.T. Police Station. Applicant No.2 Sadique is also involved in C. R. No. 289 of 2015. That when the applicants were on bail in the said crimes have committed the present crime.

5. As far as the decision relied upon by the learned counsel for the applicants in the case of **Sanjay Chandra** (supra) is concerned the Supreme Court in para 43 has held as under:

“43] There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial

may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.”

6. In the said case, the maximum punishment which would have been inflicted on the said applicants was seven years. There was no allegation of assault on a public servant performing his lawful duty. This is the distinguishing factor in the case of **Sanjay Chandra** (supra) from the present case.

After taking into consideration the serious allegations against the applicants, the gravity of the offence and the antecedents at their discredit, in view of this Court, the applicants do not deserve to be released on bail. The application is rejected.

[A. S. GADKARI, J.]