(2007) 10 DEL CK 0196

In the Delhi High Court

Case No : Bail Application No. 164 of 2007

Zohra Seikh @ Chaman APPELLANT

Vs

Stata and Others RESPONDENT

Date of Decision : 23-10-2007

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 160
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 29
Penal Code, 1860 (IPC) — Section 120B, 201, 468, 471

Citation : (2007) 99 DRJ 117

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Harijinder Singh, R.D. Rana and Shikha Tyagi, for the Appellant; Pawan Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Zohra Sheikh wife of Sharafat Sheikh seeks bail in FIR No. 464/2005 u/s 21/29 of the NDPS Act read with Sections 25/27 of the Arms Act, Sections 468/471/201/120-B IPC and Sections 3/4 of MCOCA 1999 PS Hazrat Nizamuddin, New Delhi.

2. As per the charge-sheet filed, petitioner is sought to be prosecuted for offences u/s 4 of The Maharashtra Control of Organized Crime Act 1999 (herein-after referred to as MCOCA) and offences u/s 468/471/201/120-B IPC.

3. Petitioner is the 2nd wife of Sharafat Sheikh who is alleged to be the kingpin of an organized crime syndicate. The key members of the organized crime syndicate are stated to be: Sharafat Sheikh, Abdul Wajid, Mohd. Saliim, Sheikh Hannan, Nazma Sheikh (first wife of Sharafat Sheikh) and the petitioner.

4. As per the prosecution, in the year 1978 Sharafat Sheikh came pennyless to Delhi from Kishan Ganj, Bihar. He worked as a dish-washer at a roadside eatery

in Seelampur, Delhi and went on to set up a ''kabari'' shop (junk shop) in Nizamuddin Basti in the year 1985. He purchased stolen property at throw away prices and sold the same at huge profits. His criminal career started in the year 1985 when he started selling smack. He indulged in trafficking of fake currency and as of date of filing the Charge-sheet he and his family members were found to. be in possession of 14 properties as under:

(1) Janu Bar & Restaurant, Ilnd Floor, Gala Complex, S.V. Road & Sainath Road crossing, Malad, Mumbai.

(2) Flat No. A-I/1303, Dheeraj Apptt, Kandivili, Western Express Highwary, Mumbai.

(3) H.No. K-554/2 (Bihar House), Nizam Basti, Nizamuddin, Delhi.

(4) Flat No. A-136/6, IInd Floor, Lai Building, Nizamuddin, Delhi.

(5) Syed Guest House, T-80, Mirza Galid Road, Nizamuddin, Delhi.

(6) Noor Kalab, A-58, Mirza Galib Road, Nizamuddin, Delhi.

(7) A two storey commercial building A-556, Mirza Galib Road, Nizamuddin, Delhi.

(8) A palatial flat No. G-13, Ilnd Floor, Nizamuddin West, Delhi.

(9) A house No. 49, Basti Nizamuddin, Delhi.

(10) Plot No. R-128, Khasra No. 603, Vill. Bindapur, Chankya Place-II, Uttam Nagar, Dabri, New Delhi.

(11) Plot No. R-139, Khasra No. 603, Vill.Bindapur, Chanakya Place-II, Uttam Nagar, Dabri, New Delhi.

(12) A commercial building No. B/175-176 JJ Colony, Hastsal, Uttam Nagar, Delhi (Muslim Hotel).

(13) A commercial building No. B/143-144, J J Colony, Hastsal, Uttam Nagar, Delhi (Heena Motors).

(14) One HIG Duplex Flat No. 160, Swarnim Vihar, Section 82, NOIDA (UP).

5. That he and the family members possessed a MUV Qualis No. DL-3CY-5032, a Santro car No. DL-2CM-3784, a Prado Land Cruiser No, MH-04-AS-8994, Mitsubishi Lancer No. MH-02-LA-008, a Maruti Gypsy No. DL-8C-D-2974, a Toyota Sierra Sports Car No, DL-lCF-7839 and a Maruti 800 cc car No. DL-3CL-3338. That Sharafat Sheikh, his wife and associates had various accounts in which transactions worth crores were transacted.

6. That at the Mahim Branch of the Bombay Mercantile Bank at Mumbai SB Account No. 9967 was opened by Sharafat Sheikh and between 1.7.2001 to May 2003 Rs. 27 lacs were deposited. In the same branch he had opened SB Account No. 10314 in which between May 2002 to May 2003 Rs. 71 lacs were deposited.

That Abdul Wajid had opened SB Account No. 10504 in the same branch in which Rs. 40 lacs were deposited between 30.6.2003 to December 2004. In the same branch current account No. 72349 was opened in the name of Janu Bar and Restaurant jointly owned by Sharafat Sheikh and his first wife Najma Sheikh in which Rs. 76,54,158/- was deposited between 6.8.2002 to October 2005. That in the same branch, Sharafat Sheikh, Abdul Wajid and the petitioner Zohra Sheikh had opened fixed deposit accounts being FDFCR Account Nos. 5691, 5692, 4853 and 5093 in which accounts from time to time huge amounts were deposited and withdrawn and as of date of filing of the charge-sheet all accounts save and except FDFCR Account No. 5093 in the name of petitioner Zohra Sheikh were closed. Pertaining to said account No. 5093 it has been disclosed in the charge-sheet that a deposit of Rs. 18.5 lacs has been made in 2 installments. Rs. 6.5 lacs were deposited on 21.9.2005 and Rs. 12 lacs were deposited on 11.10.2005. The said amounts were withdrawn from saving bank account No. 10314 with the State Bank of India, Delhi Branch in the name of Sharafat Sheikh. Withdrawal cheques were signed by Sharafat Sheikh when he was in judicial custody. Petitioner had visited Sharafat Sheikh in jail and had managed to obtain his signatures on the two cheques. After withdrawing the money from the State Bank of India she had invested the money in the FDFCR Account at Mumbai.

7. It hasfurther been disclosed in the charge-sheet that at the Daryaganj Branch of the Bombay Mercantile Bank Saving Account Nos.51266 and 55213 in the name of Sharafat Sheikh were detected. Account No. 51266 was opened on 6.10.2001 with an initial deposit of Rs. 1100/-. Heavy cash deposits in sum of Rs. 20,04,349/- on 8.10.2001, Rs. 1.9 lacs on 24.10.2001, Rs. 12,02,400/- on 21.12.2001, Rs. 3.5 lacs (two deposits) on 29.5.2002 and 1.6.2002 respectively, Rs. 2.5 lacs on 11.6.2002, Rs. 1 lac on 13.6.2002, Rs. 3,98,500/- on 20.8.2002, Rs. 5 lacs on 25.9.2002, Rs. 8 lacs on 5.3.2003, Rs. 5 lacs on 5.5.2003, Rs. 4.9 lacs on 14.6.2003, Rs. 10 lacs on 5.3.2004, Rs. 10 lacs on 8.3.2004 and Rs. 9.98 lacs on 9.3.2004 were deposited in the said account. Part of this money was transferred to FD Accounts No. 5984, 5985 and 5986 in the name of the three children of Sharafat Sheikh. Rs. 10 lacs was transferred in FDFCR Account No. 6530.

8. Thus, in a little over 2 years and 6 months Rs. 1,02,13,874/- has been transacted only in one account.

9. Accounts being SB Account No. 5463 and 9525 were detected at the Bank of Maharashtra, Greater Kailash-II, New Delhi and Bank of Maharashtra, Khar, Mumbai in which within a span of 10 months, Sharafat Sheikh had credited Rs. 64 lacs. Funds were transferred from this account to various other accounts.

10. With the State Bank of India, Nizamuddin West Saving Account No. 301 and Saving Account No. 26245 were found in the name of Sharafat Sheikh in which approximately Rs. 1.2 lacs were deposited.

11. That petitioner Zohra Sheikh was found operating 6 accounts as under:

(1) SB A/c No. 2216, Bank of India, CGO Complex, Lodi Colony, New Delhi.

(2) SB A/c No. 522-1-110013-3, Standard Chartered Bank, Sansad ''. Marg, New Delhi.

(3) SB A/c No. 52205425891, Standard Chartered Bank, Sansad Marg, New Delhi.

(4) SB A/c No. 40488, Bank of India, Janpath Branch, New Delhi.

(5) SB A/c No. 9585, The Jammu & Kashmir Bank Ltd., Lajpat Nagar, Delhi.

(6) FDFCR A/c No. 5093, Bombay Mercantile Co-operative Bank, Mahim, Mumbai (Rs. 18.5 lacs were found in this a/c and freezed).

12. Pertaining to accounts in the name of the petitioner, it has been disclosed as under:

The SB A/c No. 9585 was opened by Mrs. Zohra Begum w/o Sharafat Sheikh r/o 136/6, IInd Floor, Nizamuddin, Delhi, on 30.4.2003 on the introduction of her sister Mrs.Fatima Ameen. Mrs.Zohra Begum has/had deposited heavy cash on different dates since opening of account till 26.10.2005, which raises suspicion regarding the source of such heavy cash. Cash Rs. 43,500/- (Rupees forty three thousand five hundred) on 30.4.2003, cash Rs. 29,000/- (Rupees twenty nine thousand) on 14.5.2003, cash Rs. 35,000/- (Rupees Thirty five thousand) on 23.6.2003, cash Rs. 20,000/- (Rupees Twenty thousand) on 14.10.2003, cash Rs. 29,000/- (Rupees Twenty nine thousand) on 28.10.2003, cash Rs. 35,000/- (Rupees Thirty five thousand) on 23.6.2003, cash Rs. 20,000/- (Rupees twenty thousand) on 14.10.2003, cash Rs. 12,000/- (Rupees twelve thousand) on 28.10.2003, cash Rs. 48,500/- (Rupees Forty eight thousand and five hundred) on 1.12.2003, cash Rs. 42,500/- (Rupees Forty two thousand and five hundred) on 23.12.2003, cash Rs. 49,000/- (Rupees forty nine thousand) on 10.2.2004, Rs. 49,000/- (Rupees Forty Nine thousand) on each day on 8, 9, 10 and 11 March 2004 respectively, Rs. 48,900/-(Rupees Forty eight thousand nine hundred) on 6.5.2004, Rs. 49,000/-(Rupees Forty Nine thousand) on 12.5.2004, Rs. 92,626/- (Rupees Ninety two thousand six hundred twenty six) on 19.1.2005, cash Rs. 49,000/-(Rupees Forty nine thousand) on 2.4.2005, cash Rs. 50,000/- (Rupees Fifty thousand) on 12.9.2005, cash Rs. 40,000/- (Rupees forty thousand) on 13.9.2005,cash Rs. 50,000/- (Rupees fifty thousand) on 14.9.2005, Rs. 50,000/- (Rupees Fifty thousand) on 15.9.2005, Rs. 40,000/- (Rs. Forty thousand) on 19.9.2005, Rs. 44,100/- (Rupees Forty four thousand and one hundred) on 3.10.2005 and Rs. 9.5 lacs (Rupees Nine lacs and fifty thousand) were deposited on 21.10.2005. This account has been freezed with a balance of Rs. 4,13,501/- (Rupees Four lacs, thirteen thousand five hundred and one). A fixed deposit of Rs. 50,000/- has also been freezed in this account. There are transactions worth more than Rs. 19 lacs in this account during a period of about 2 1/2 years. A sum of Rs. 7 lacs were withdrawn from this account on 24.10.2005 and 26.10.2005 with the intention of destroying evidence and siphoning off the money from the eyes of law.

It is interesting to note that during the same period a notice u/s 160 Cr.P.C. was issued to Zohra Sheikh for 28.10.2005 and was pasted at the residence of Zohra Sheikh i.e. Flat No. A-136/6, Lai Building, Nizam Basti, Nizamuddin, Delhi on which her sister Mrs.Fat-ima Ameen gave a reply in writing that Zohra Sheikh is away to Ajmer for ZIYARAT and hence could not join investigation. In fact, Zohra Sheikh was in Delhi and she was destroying the evidence by withdrawing the huge cash from her account personally on 24 and 26 October 2005.

On scrutiny of documents pertaining to SB Account No. 2216, Bank of India, CGO Complex, Lodhi Road, Delhi it is found that this account was opened by Zohra Begum on 3.2.1999 with an initial deposit of Rs. 50,000/- (Rs. Fifty thousand) and mentioned her address as C-278, Bawli Gate, Gali Goga Bai, Basti Nizamuddin, Delhi with date of birth as 04.05.1969. This account too was introduced by Mrs. Fatima Amin. The patter of account is similar to that of Sharafat Sheikh and heavy cash has been deposited in this account on different dates. Some of the major entries are Rs. 1.13 lacs (Rupees one lac and thirty thousand) on 24.12.2001, cash Rs. 74,500/- (Rupees Seventy four thousand five hundred) on 25.2.2002, cash Rs. 60,000/- (Rs. Sixty thousand) on 30.4.2002, cash Rs. 4,99,500/- (Rs. four lacs ninety nine thousand and five hundred only) on 1.5.2002, cash Rs. 55,000/- (Rs. fifty five thousand) on 20.7.2002, cash Rs. 1.13 lacs (Rupees one lac and thirteen thousand) on 6.9.2002, cash Rs. 5 lacs (Rs. five lacs) on 25.9.2002, cash Rs. 45,000/- (Rs. Forty five thousand) on 13.11.2002, Rs. 1.4 lacs (Rs. one lac and fourty thousand) in December 2002, Rs. 98,000/- (Rupees Ninety Eight thousand) in March 2003, cash Rs. 4 lacs (Rs. Four lacs) on 12.2.2004, and cash approximately Rs. 8 lacs (Rs. Eight lacs) in March 2004, cash Rs. 47,500/- (Rs. Forty Five thousand five hundred) on 12.5.2004. A DD of Rs. 10 lacs (Rs. Ten lacs) was sent to Mumbai in the name of Sharafat Sheikh on 5.3.2004 from this account. There were transactions worth more than Rs. 31 lacs during a short period of 24.12.2001 to 2.8.2004 in this account of Zohra Sheikh.

On scrutiny of documents of SB A/c No. 40488 of Zohra Sheikh w/o Sharafat Sheikh r/o 136/6 IInd Floor, Basti Nizamuddin, Delhi, it was found that this account too has been used for depositing heavy cash. Some of the major credit entries are Rs. 50,000/- (Rs. fifty thousand) on 1.10.2002, Rs. 5 lacs (Rupees Five lacs) on 4.3.2003, Rs. 60*000/- (Rupees Sixty thousand) on 18.12.2003, Rs. 1,42,000/- (Rs. one lac and forty two thousand) on 13.1.2004, Rs. 42,000/- (Rs. forty two thousand) on 27.1.2004, Rs. 49,000/- (Rs. Forty nine thousand) on 4.2.2004, cash Rs. 49,000/- (Rs. Forty nine thousand) on 5.2.2004, cash Rs. 1.43 lacs (Rs. one lakh forty three thousand) in June 2004. From this account two Pay orders each valued at Rs. 1,41,921/- (Rs. One lac, forty one thousand, nine hundred and twenty one) on 14.1.2001 and 5.2.2004, one pay order of Rs. 1,41,971/- (Rs. One lac, forty one thousand, nine hundred seventy one) on 23.6.2004 were issued to make payment for the flat No. 160, Section 82, Swarnim Vihar, NOIDA, purchased in the name of Zohra Sheikh. In this account of Zohra Sheikh, during the period of about 2 years i.e. 26.9.2002 to 23.6.2004, transactions worth more than Rs. 11 lacs took place.

In totality, if we put all the three SB A/c Nos. 2216, 40488 and 9585 of Zohra Sheikh together, there were transactions worth more than Rs. 61 lacs during the same period.

13. In respect of the petitioner, apart from referring to the 6 accounts she was maintaining in her name and in respect whereof that she could not render any satisfactory explanation it stands recorded that the petitioner was a divorcee when she married Sharafat Sheikh and had no income nor any assets when she married Sharafat Sheikh. It was further stated in the charge-sheet that she had procured a voter identity card from Jammu and Kashmir, a voter identity card from Faridpur and a voter identity card from Bareilly. That she used these cards as identity proofs meaning thereby she would impersonate herself as 3 different persons. That funds had flown from her accounts for purchase of some of the properties in the name of her husband Sharafat Sheikh and co-accused Abdul Wazid. It is alleged in the charge-sheet that when her husband was arrested she had faked identity to visit him injudicial custody and had passed on instructions to the members of the syndicate.

14. It is alleged in the charge-sheet that neither accused person could explain the heavy cash flow recorded in the various bank accounts. That when arrested, Sharafat Sheikh was heavily armed with unauthorized weapons. The charge-sheet discloses the details of 25 FIRs in which Sharafat Sheikh is an accused. It is further stated in the charge-sheet that neither property holder could disclose the source of funds to acquire the properties.

15. Shri Harjinder Singh, learned senior counsel urged that as held by the Supreme Court in the decision reported as State of Maharashtra and Others Vs. Lalit Somdatta Nagpal and Another, and the Division Bench of the Bombay High Court reported as 2000 All. M.R. (Cri.) 1061 Bharat Shantilal Shah v. State of Maharashtra sine qua non for taking action under MCOCA was the allegation that the accused was a member of an organized crime syndicate as defined u/s 2(1)(f) and that the syndicate was indulging in organized crime as defined u/s 2(1)(e) and that the organized crime related to continuing antisocial activity as defined u/s 2(l)(d). Learned senior counsel urged that petitioner was an accused only in 3 FIRs. 2 out of the 3 related to her feud with the first wife of her husband. That there was no material to show that the petitioner was a member of an organized crime syndicate or was involved in an organized crime.

16.1 need not note the 3 decisions of the Supreme Court relied upon by learned senior counsel for the petitioner for the reason charge-sheet presented against the petitioner seeks to prosecute her for the offence not u/s 3 of MCOCA but u/s 4 thereof.

17. Section 3 of MCOCA is attracted when it is alleged that a person has committed an organized crime or is a member of an organized crime syndicate. Section 4 is attracted when it is alleged that the accused is in possession of

movable or immovable property on behalf of members of an organized crime syndicate which the accused cannot satisfactorily account for.

18. A meaningful reading of the charge-sheet shows that the case of the prosecution against the petitioner is of holding properties on behalf of members of an organized crime syndicate, acquisition of which property has not been satisfactorily explained by the petitioner.

19. To attract Section 4 of MCOCA, prima facie, 2 things have to be alleged. Firstly, that there is an organized crime syndicate and secondly that the accused person is possessing movable or immovable property on behalf of the members of the organized crime syndicate and has not been able to satisfactorily explain the same.

20. As noted herein above, there are allegations in the charge-sheet and documents have been filed along therewith evidencing flow of funds from the accounts of the petitioner to the account of members alleged to be indulged in organized crime. There are allegations, with documents in support thereof, evidencing funds provided from the accounts of the petitioner for acquisition of assets by the alleged members of the organized crime syndicate. There are allegations of funds flowing to the accounts of the petitioner from the accounts of the alleged members of the syndicate with further linkage of acquisition of assets by the petitioner from said funds.

21. There is prima facie material to infer that the petitioner is possessing movable and immovable property on behalf of members of an organized crime syndicate.

22. In this connection it would be relevant to note that in approximately 22 years, husband of the petitioner who is involved in as many as 25 FIRs has acquired assets worth crores. Video films pertaining to his residence, presented as a piece of evidence along with the charge-sheet reveals the opulent lifestyle. Neither petitioner nor her husband have been able to render any satisfactory explanation justifying the acquisition of the assets.

23. No case is made out to release the petitioner on bail.

24. The petition is dismissed.

