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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 11.01.2017

% **Judgment delivered on: 20.02.2017**

+ **BAIL APPLN. 1481/2016**

ZOHRA SHEIKH

..... Petitioner

Through: Mr. Amit Sharma, Mr. Manu Sharma
and Ms. Ridhima Mandhar,
Advocates.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Ms. Radhika Kolluru, APP along with
SI Rohit, PS-Crime Branch, for State.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

J U D G M E N T

VIPIN SANGHI, J.

1. The Applicant herein, Zohra Sheikh has preferred the present bail application seeking regular bail under section 439 of the Code of Criminal Procedure (Cr.P.C) read with Section 21(4) of Maharashtra Control of Organised Crime Act, 1999 (MCOCA) in case FIR No. 464/05 under sections 21/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), 25/27 of the Arms Act, 468/471 of Indian Penal Code (IPC) read with sections 3 & 4 of MCOCA titled *State v. Sharafat Sheikh* pending

adjudication before Ld. ASJ, Saket District Courts, New Delhi. The applicant is facing trial under section 3(2), 3(5) and 4 of MCOCA, section 3 read with section 181 of Motor Vehicles Act (MV Act) and section 201 and 471 of IPC and has been in judicial custody since 12.06.2006. The prosecution evidence is complete in the case and application under Section 311 CrPC and supplementary charge sheet is pending consideration.

2. The case of the prosecution is that based on secret information received through an informer on 07.07.2005, main accused Sharafat Sheikh, BC of PS Nizamudin, suspected to trade in narcotics with his gang members in Delhi on a large scale, was to come to his residence with co accused Mohd. Salim having smack and illegal arms in his possession. Based on this specific information, a special team was constituted and a raid was conducted. Main accused, Sharafat Sheikh was found to be in possession of a pistol loaded with four live cartridges and a packet containing 500 grams of brown coloured powder alleged to be 'Heroin/smack'. A ruqqa was prepared and the subject FIR was registered in PS Nizamuddin.

3. Investigation revealed that main accused Sharafat Sheikh was deeply involved in illegal trade of drugs and implicated in more than 75 criminal cases concerning offences under, inter alia, NDPS Act, Arms Act, IPC (theft, hurt, assault on government officials, criminal intimidation, kidnapping etc.). Since it was alleged that Sharafat is the chief of a crime syndicate and is amassing wealth through illegal trade of narcotics, provisions under MCOCA were invoked and approved. Sanction u/s 23(2) of MCOCA was granted by the Addl. Commissioner of Police for prosecution of petitioner's co accused Sharafat Sheikh, Mohd. Saleem,

Sheikh Hannan, and Mrs. Najma Sheikh (first wife of Sharafat Sheikh). Subsequently, the first charge sheet dated 10.12.2005 was filed against the aforesaid co accused with certain discoveries against the applicant as well. During the course of further investigation, the prosecution sought sanction against the applicant herein (second wife of Sharafat Sheikh) for the alleged commission of offence under section 4 MCOCA and a supplementary charge sheet dated 08.09.06 was filed against her. Further, the Ld Sessions Judge, while framing charges added section 3(2), 3(5) MCOCA, section 201 IPC, section 471 IPC and section 3 read with 181 of MV Act in addition to Section 4 MCOCA against the applicant. She was arrested on 12.06.2006. She applied for regular bail before the Sessions Court which was dismissed by the Ld. Sessions Judge vide order dated 27.06.2016.

4. The investigation disclosed that the main/co accused Sharafat Sheikh purchased a number of immoveable and moveable properties in his name and in the name of his wives - including the accused applicant Ms. Zohra Sheikh, from the funds allegedly generated out of illegal trade of narcotics. The applicant was holding many bank accounts, opened after her marriage in Delhi and Mumbai. The applicant, with her husband/co accused Sharafat and their family members were maintaining a very lavish and fancy lifestyle. It is the case of the prosecution that the applicant has acquired and is possessed of the aforesaid wealth, movable and immoveable properties by facilitating the crime syndicate lead by her husband Sharafat and has thereby committed an offence, inter alia, under Section 3(2), 3(5) and 4 of MCOCA.

5. Learned counsel for the Applicant, Mr. Amit Sharma submits that provisions of MCOCA are not attracted in the instant case since none of the

ingredients of the offences alleged are even, prima facie, met. He relies upon Section 2(d) of MCOCA which defines “continuing unlawful activity” to submit that more than one previous charge-sheet have to be filed against the accused before a competent court within the preceding period of 10 years to invoke the provisions of MCOCA. He submits that in the instant case, prosecution has filed two supplementary charge-sheets and trial has gone for almost 11 years and not a single previous charge sheet has been placed on record against the applicant. Reliance is placed on *State of Maharashtra v. Rahul Ramchandra Taru*, 2011 SCC OnLine Bom 605, in this regard. It is also his submission that under Section 2(d) of the Act, the prosecution should show that the court where the previous charge sheets have been filed, has taken cognizance of the offence. He further submits that the three FIRs, annexed in the charge-sheet, registered against the applicant do not indicate whether cognizance of such offences has been taken, or not.

6. Mr. Sharma further submits that the aforesaid FIRs do not indicate the continuing unlawful activity of illegal trade in narcotics and stolen properties, as alleged by the prosecution. It also fails to establish an ‘organized crime’ under Section 2(e) of MCOCA, as no live link or nexus can be ascertained between the offences entailed in the aforesaid FIRs and the alleged organized crime. He submits that these FIRs cannot be called in aid to attract Section 2(e) against the applicant. He submits that in order to constitute ‘organized crime’, any continuing unlawful activity must be undertaken with the objective of gaining pecuniary, economic or other benefit. He submits that the allegation that the applicant is a beneficiary of the wealth generated through illegal trade of narcotics is not sufficient, as

the prosecution is statutorily required to establish the nexus of wealth with the continuing unlawful activity. He further submits that in the instant case no investigation has been done as to the source of the said wealth and properties and, thus, the said wealth/ assets cannot be called in aid to complete the chain required to establish the existence of organised crime. Reliance is placed on *Rahul Ramchandra Taru* (supra) in support of the aforesaid proposition - that an unlawful activity alleged in the previous charge sheets should have nexus with the commission of the crime which MCOCA seeks to prevent or control.

7. Mr. Sharma submits that the prosecution has further failed to, prima facie, establish the ingredients of Section 2(f) which defines 'organized crime syndicate'. He submits that the prosecution has sought to create an illusion of a 'gang' by colouring the association of the applicant with the co-accused persons as an organised crime syndicate, but has failed to fix the role of any of the accused persons in the alleged syndicate, or reveal the modus operandi adopted by the said 'gang', or recover any contraband/narcotics from the premises of the accused. The nature of investigation appears to be only in relation to the economic aspects only i.e. to quantifying the value of movable and immovable properties owned or possessed by the applicant. No specific role has been attributed to the applicant in commission of the alleged organized crime. He further submits that no case under Section 4 of MCOCA is made out, since the prosecution has failed to establish an organized crime syndicate as well as possession of unaccountable wealth by the applicant on behalf of that syndicate.

8. He submits that the applicant's source of income is not unaccounted for, as alleged by the prosecution. He submits that the investigating agency has revealed that the Applicant's husband owns Syed Guest House, Noor Kabab and a commercial complex called Heena Motors. The applicant's husband and his first wife own Janu Bar & Restaurant which are clearly sources of revenue likely to be generated in cash. Reliance is placed upon the deposition of PW 53, Sh. Sunil Grover, who has revealed that Zohra Sheikh is running a beauty parlour, Sharafat Sheikh is a waste material merchant and Nazma Sheikh is the proprietor of Sheikh Hotel. Reliance is also placed on the deposition of PW 41, Sh. Sayad Intikhab Hasan who has stated that an amount of Rs. 25 lakhs - which was paid by the accused Sharafat Sheikh to him by cheque for purchasing a property, was subsequently returned to his wives in various instalments, the last being vide a DD of the amount of Rs. 9.50 lakhs, paid into the account of Zohra Sheikh. Further, Mr. Sharma relies upon the deposition of PW 18, Sh. Amit Kurichh who stated that Zohra Sheikh has taken credit facility of nearly Rs. 5 lakhs, overdraft facility of nearly Rs. 1.50 lakhs as well as other loan facility from Standard Chartered Bank, and submits that any property acquired from the said loan/credit facility cannot be portrayed as having ensued from the alleged continuing unlawful activity. Mr. Sharma submits that the aforesaid depositions cement the contention of the applicant that the prosecution has merely suspected the source of generation of funds to be the alleged continuing unlawful activity, while no investigation has been done thereto.

9. Mr. Sharma submits that the applicant is being tried for offences under MCOCA and not the Income Tax Act, and, therefore, allegations that applicant's wealth is beyond her known sources of income does not suffice. Further, the investigation agency has failed in adducing evidence to show that the alleged assets of the applicant have been derived from the alleged organized crime and thus, no case under Section 3(5) of MCOCA is made out.

10. He submits that the sanction Section 23(1) (a) and 23(2) of MCOCA has been granted without having placed relevant materials before the competent authority. He submits that the approval and the sanction under the Act are tainted for being granted on extraneous considerations. He relies on the sanction order dated 07.09.2006 to submit that the same does not mention on the basis of which previous involvements, the accused applicant has been deemed to be a beneficiary of the proceeds of crime, as no other previous charge sheets have been produced on record.

11. Mr. Sharma submits that the stringent provisions of MCOCA with its strict interpretation and observance, makes it very difficult for an accused to obtain bail and, therefore, it is to be seen whether the investigation from its very inception has been done keeping in mind the essential ingredients of MCOCA. He submits that the initiation of proceedings under MCOCA is in derogation of the due procedure established by law - particularly u/s 2(d) and 23 of the Act, and is thereby infringing upon the fundamental right of the applicant. He further submits that since MCOCA has been misapplied, the stringent provision of section 21(4) of the said Act cannot be attracted. He also submits that co accused Najma Sheikh - who is also facing trial u/s

3(2), 3(5) and 4 of MCOCA, has been granted regular bail vide order of the Ld. Trial court Judge dated 29.10.2005 and the present petition shall be allowed on the sole ground of parity itself.

12. Mr. Sharma further submits that the applicant deserves the benefit of section 436A Cr.P.C which provides:

“436A. Maximum period for which an under trial prisoner can be detained.- Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation – In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

13. It is the submission of the applicant that she has served a period of over 10 years as an under trial prisoner and has already served the maximum period of sentence as entailed in section 4 of MCOCA i.e. 10 years; u/s 201 IPC i.e.3 years; u/s 471 IPC i.e. 7 years and u/s 3 read with section 181 MV

Act i.e. 3 months. As regards section 3(2) & section 3(5) - which carries a maximum punishment of life imprisonment, applicant submits that since she has undergone around 10 years of incarceration, she is entitled to be released by the court in light of the aforesaid provision. Mr. Sharma placed reliance on ***Romesh Sharma v. CBI***, 2011 SCC OnLine Del 4430, wherein the court observed that the minimum imprisonment expected to be undergone in a case of 'life imprisonment' is 14 years and since the accused has already undergone about 13 years of imprisonment, it is a fit case where the petitioner deserves to be enlarged on bail, because 13 years is more than one half of the sentence. Reliance is further placed on ***Thana Singh v. CBI***, (2013) 2 SCC 603, to support the contention that after the accused person has suffered imprisonment, which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualized by Article 21.

14. Mr. Sharma further submits that the trial is at the stage of recording of statement of the accused u/s 313 CrPC and may take time to conclude. Keeping in view the length of the trial, the applicant should be let out on bail. He submits that since the prosecution evidence is complete there is no likelihood of the applicant tampering with the evidence. Reliance is placed on ***Chenna Boyanna Krihna Yadav v. State of Maharashtra***, (2007) 1 SCC 242, wherein the Supreme Court observed that the period of incarceration and the fact that the trial is not likely to be concluded in the near future, may be taken into consideration while granting bail.

15. The Bail Application is vehemently opposed by the State. The learned Additional Public Prosecutor Ms. Radhika Kolluru, submits that during the

trial, co-accused Hanna Sheikh @ Hannan Kali and Abdul Wajid @ Master Ji have pleaded guilty and were convicted by the trial court vide orders dated 04.10.10 and 24.01.11 respectively. She submits that the co-accused Abdul Wajid has clearly stated in his confession statement dated 13.04.06 that all cash deposited/transacted through the saving accounts of the applicant/accused Zohra Sheikh, Najma Sheikh, and from his own account, belonged to accused Sharafat Sheikh. This statement is admissible in evidence under section 18 of MCOCA. He further disclosed that the accused Sharafat Sheikh, along with his associates, indulged in the illegal trade in narcotics and dealt in stolen properties and acquired huge wealth out of the same.

16. She submits that the applicant/accused and her family members have no legal source of income, except wealth/properties generated from illegal trade of narcotic drugs and from dealing in stolen properties. This is evidenced by the confessional statement of co-accused Abdul Wajid as aforementioned, and the lack of production of any documentary evidence by the co-accused or their family members to disprove the same. Ld. APP relies upon the status report and submits that the applicant has carried out transactions of over Rs 63 lacks in her three savings accounts, in a period of approx. 2.5 years. She submits that the applicant, post her marriage to the main accused Sharafat Sheikh, was not having any known source of income nor was she doing any business. She had, in fact, in many documents declared herself as a housewife. Even if she was working or doing business, she has failed to give any cogent evidence regarding the same. Her objective was to marry Sharafat to enjoy his wealth and facilitate him by holding

unaccounted wealth and properties in her name on behalf of the crime syndicate being run by the co-accused Sharafat. Ld. APP relies upon the following extract from the supplementary charge sheet in regard to this submission:

“The accused Zohra Sheikh in her disclosure statement disclosed about the crime syndicate in detail. She got married to Sharafat Sheikh in 1996 after divorcing her husband who used to work in a hotel along with her. She is having a son out of this wedlock. Zohra Sheikh belonged to a lower middle class family and is a qualified hair dresser. She married Sharfata Sheikh, who is an illiterate, in the year 1996 to enjoy his wealth and live lavishly knowing fully well that the wealth owned by Sharafat Sheikh is out of his illegal activities including trade of narcotics. ”

17. Ld APP points out the following previous criminal cases that have been registered against the applicant/accused, in which she has been convicted or is accused:

Sr. No.	FIR No.	Under Section	Police Station	Status
1.	478/2002	366/34 IPC	Kotla Mubarakpur, Delhi	Convicted with fine of Rs. 500/- vide order dated 07.01.2011
2.	669/2000	324/34 IPC	HN DIN, Delhi	Convicted with fine of Rs 1000/- vide order dated 24.12.2010
3.	651/2000	160 IPC	HN DIN, Delhi	Challan filed in court on 27.07.2001

18. She further submits that the investigation has revealed that the applicant accused had procured two Voter ID cards - one Voter ID card No. J&K 23-006028 issued from Srinagar constituency of J & K - which was used by the applicant accused for meeting Sharafat Sheikh in Tihar Jail, and second being Voter ID card No. MTT 1796226 issued from Faridpur, Barriely. Both Voter Id cards have been found to be forged during verification.

19. Ld APP submits that during investigation, the applicant disclosed that she used to command the gang whenever Sharafat Sheikh went to jail, with the help of her sister Fatima Ameen@ Rani. She stated that she used to remove heavy cash from her and her husband's accounts and would get signed blank cheques from Sharafat when he was in Jail to avoid seizure and hardship. She submits that while Sharafat was in Jail since 07.07.05, the applicant had transferred an amount of Rs. 6.5 lacs and 12 lacs on 21.09.05 and 11.10.05 respectively into her FDFCR account No. 5093 with the purpose to destroy evidence. This account, after investigation, was frozen. She relied on the statement recorded u/s 161 CrPC of the Chartered Accountant of Sharafat, wherein he stated that in July 2005 the applicant, along with co accused Najma Sheikh and Abdul Wajid had tried to pressurize him to incorporate the vehicles, properties and income thereof in their pending income tax returns, to which he did not oblige.

20. Ld. APP submits that the applicant is a part of the crime syndicate which is further substantiated by the fact that the applicant was residing at H.No. N-36, IInd floor, near Khalilulah Masjid, Batla House, Okhla, Delhi at the time of her arrest. This is the same house that was taken on rent by co-

accused Abdul Wazid from Syed Intikhab Hassan, and was encroached by the applicant when Abdul Wazid was on the run in this case. Further, co-accused Sharafat, Najma Sheikh and Abdul Wajid and applicant/accused Zohra used the common address Flat A-I/1303, Dheeraj Apartments, Western Express Highway, Kandiwali, Mumbai for correspondence/residential address. Furthermore, on 13th June 2006 accused Zohra had surrendered one pistol with its license and one Double Barrel gun 12 bore without arm License in the office of Anti Extortion Cell, Crime Branch. The aforesaid facts, as per the Ld. APP's submission, establish that the applicant accused has had a clear role in knowingly facilitating and abetting the commission of the organized crime by Sharafat Sheikh and his associates in the crime syndicate.

21. In is rejoinder, Mr. Sharma submits that the confessional statement of co accused Abdul Wajid, as relied upon by the Ld. APP as well as the Ld. ASJ in the bail order dated 27.06.2016, cannot be used as a sole piece of incriminating evidence. Mr. Sharma submits that the evidentiary value of the aforesaid confessional statement is a matter of trial and is rendered worthless if used as the only piece of incriminating evidence.

Discussion and Decision

22. Having heard learned counsel for the applicant and the learned APP, I am of the view that there is no merit in this petition. There is sufficient material available on record to, prima facie, indicate the involvement of the applicant in abetting, conspiring and knowingly facilitating the commission of organized crime alleged to have been carried out by co accused/ main

accused Sharafat Sheikh and his associates. The applicant herein is being tried under section 3(2), 3(5) and 4 MCOCA, section 201 & 471 IPC and section 3 read with 181 of MV Act. It is her submission that charges under MCOCA do not apply as against her. Before I proceed further, I shall first deal with the aspect of applicability of provisions of MCOCA in the present case.

23. Mr. Sharma has argued that Section 2(d) defines “continuing unlawful activity”, to mean that more than one charge sheet has to be filed against the accused to invoke charges under MCOCA against the accused. He submits that the prosecution, in the present case, has failed to furnish any charge-sheet(s) filed against the applicant that establishes nexus between the offence alleged therein with the commission of the crime which MCOCA seeks to prevent or control. Section 2(d) of MCOCA reads as under:-

“d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;”

(emphasis supplied)

24. In ***Govind Sakharam Ubhe v. State of Maharashtra***, 2009 SCC OnLine Bom 770, the Division Bench interpreted the words “in respect of which more than one charge-sheet have been filed” used in section 2(d) of the Act. The Court observed that:

“the words ‘in respect of which more than one charge-sheet have been filed’ cannot go with the words ‘a member of a crime syndicate’ because in that case, these words would have read as ‘in respect of whom more than one charge-sheet have been filed’.”

25. The Court further observed in Para 39 that:

“A person may be a part of the module which jointly undertakes an organized crime or he may singly as a member of the organized crime syndicate or on behalf of such syndicate undertake an organized crime. In both the situations, the MCOCA can be applied. It is the membership of organized crime syndicate which makes a person liable under the MCOCA..... The charge under the MCOCA ropes in a person who as a member of the organized crime syndicate commits organized crime i.e. acts of extortion by giving threats, etc. to gain economic advantage or supremacy, as a member of the crime syndicate singly or jointly. Charge is in respect of unlawful activities of the organized crime syndicate. Therefore, if within a period of preceding ten years, one charge-sheet has been filed in respect of organized crime committed by the members of a particular crime syndicate, the said charge-sheet can be taken against a member of the said crime syndicate for the purpose of application of the MCOCA against him even if he is involved in one case. The organized crime committed by him will be a part of the continuing unlawful activity of the organized crime syndicate. What is important is the nexus or the link of the person with organized crime syndicate. The link with the ‘organized crime syndicate’ is the crux of the term ‘continuing unlawful activity’. If this link is not established, that person cannot be roped in.”

26. The interpretation offered by Mr. Sharma does not harmonise with the object of MCOCA. The emphasis is on the unlawful activities committed by the “organized crime syndicate”, and the requirement of one or more charge-sheet is in relation to the unlawful activities of the organized crime

syndicate, and not a particular accused. ***Rahul Ramchandra Tiku*** (supra) relied upon by the applicant is regarding the proposition that to establish a continuing unlawful activity, mere filing of more than one charge-sheet within the preceding period of 10 years is not enough. Other ingredients have to be viewed as well, and not that more than one charge-sheet has to be filed against the accused at hand. A perusal of these cases makes it clear that what is imperative is the nexus or link of the accused with the organized crime syndicate which, prima facie, appears through the materials brought on record and, therefore, attracts the provisions of MCOCA against the applicant.

27. The factors to be considered by a court in an application for bail under MCOCA are laid out in Section 21(4) of the said Act. It provides as follows:

“(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless -

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

*(b) where the Public Prosecutor opposes the application, the Court is satisfied that **there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.**”*

(emphasis supplied)

28. The Supreme Court in ***Gokul Bhagaji Patil v. State of Maharashtra***, (2007) 2 SCC 475, observed that “*Since the provisions of MCOCA have been invoked in the present case, in addition to the basic considerations, namely, the nature and seriousness of the offence; the character of the*

evidence; reasonable apprehension of witness being tampered with and reasonable possibility of the presence of the accused not being secured at the trial, etc.; which normally weigh with the courts for granting bail in non-bailable offences, the limitations imposed in sub-section (4) of Section 21 of MCOCA need to be kept in view while deciding whether or not the appellant is entitled to bail.”. Further the Supreme Court in **State of Maharashtra v. Vishwanath Maranna Shetty**, (2013) 1 SCC (Cri) 105, in Para 29 observed:

“29. While dealing with a special statute like MCOCA, having regard to the provisions contained in sub-section (4) of Section 21 of this Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. In view of the above, we also reiterate that when a prosecution is for offence(s) under a special statute and that statute contains specific provisions for dealing with matters arising thereunder, these provisions cannot be ignored while dealing with such an application. Since the respondent has been charged with the offence under MCOCA, while dealing with his application for grant of bail, in addition to the broad principles to be applied in prosecution for the offences under IPC, the relevant provision in the said statute, namely, sub-section (4) of Section 21 has to be kept in mind. It is also further made clear that a bare reading of the non obstante clause in sub-section (4) of Section 21 of MCOCA that the power to grant bail to a person

*accused of having committed offence under the said Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 but also subject to the restrictions placed by clauses (a) and (b) of sub-section (4) of Section 21. Apart from giving an opportunity to the prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. **The satisfaction contemplated in clauses (a) and (b) of sub-section (4) of Section 21 regarding the accused being not guilty, has to be based on “reasonable grounds”. Though the expression “reasonable grounds” has not been defined in the Act, it is presumed that it is something more than prima facie grounds. We reiterate that recording of satisfaction on both the aspects mentioned in clauses (a) and (b) of sub-section (4) of Section 21 is sine qua non for granting bail under MCOCA.***

(emphasis supplied)

29. Sections 3(2), 3(5) and 4 of MCOCA read as follows:-

“3. Punishment for organised crime-

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of an organised crime or any act preparatory to organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum of rupees five lacs.

(5) Whoever holds any property derived of obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which, shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.

4. Punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate.

If any person on behalf of a member of an organised crime syndicate is, or, at any time has been, in possession of movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also be liable for attachment and forfeiture, as provided by section 20.”

30. Prima facie, it appears from the material brought on record, that the applicant Zohra Sheikh has been a conspirator and has knowingly facilitated the alleged organized crime syndicate. The Supreme Court in ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra***, (2005) 5 SCC 294, also relied in ***Prasad Shrikant Purohit v. State of Maharashtra***, (2015) 7 SCC 440, observed that in order to invoke MCOCA, even if a person may or may not have any direct role to play as regards the commission of an organised crime, if a nexus either with an accused who is a member of an “organised crime syndicate”, or with the offence in the nature of an “organised crime” is established, that would attract the invocation of Section 3(2) of MCOCA. In the present case, the applicant is married since 1996 to the prime accused Sharafat who is alleged to be running an organized crime syndicate. The charge sheet filed against him discloses that he has been arrested in more than 75 cases and is a BC in PS Nizamuddin. MCOCA defines the term abet under Section 2(a) as follows:-

“(a) "abet", with its grammatical variations and cognate expressions, includes,-

(i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate;

(ii) the passing on or publication of, without any lawful authority, any information likely to assist the organised crime syndicate and the passing on or publication of or distribution of any document or matter obtained from the organised crime syndicate; and

(iii) the rendering of any assistance, whether financial or otherwise, to the organised crime Syndicate; ”

(emphasis supplied)

31. The applicant has been holding property both - movable and immovable, in her name, without disclosing any legal source of income from where such property has been bought. The status report filed by the State lists the details of the wealth possessed by the applicant/accused and the relevant extract is reproduced hereunder:-

*“i. There is a **FD for Rs. 18.5 Lacks** in her name in Bombay Mercantile Bank, Mahim Branch Mumbai.*

*ii. She collected a **Demand Draft for Rs. 9.7 Lacs** from Mumbai in her name in the month of Oct-25 & deposited the same in her saving account in J& K Bank, Lajpat Nagar, New Delhi.*

*iii. She withdrew **Rs. 8.3 Lakhs** from her saving account No. 9585 in J& K Bank, Lajpat Nagar Branch Delhi, in Oct 2005 and destroyed the evidence, after the arrest of accused Sharafat Sheikh while she was avoiding her arrest knowingly.*

*iv. She holds a saving account number 40488 in Bank Of India, Janpath Branch Delhi. There is a transaction for **more than Rs.***

11 lacks during a short period of less than two years i.e. 26.9.02 to 15.7.04.

v. *She holds a saving account number 2216 in Bank Of India, C.G.O Complex Branch. There is a transaction for more than Rs. 32.5 lacks during the period 27.2.99 to 2.8.04.*

vi. *She also holds a saving account numbers 9585 in J& K Bank, Lajpat Nagar Branch Delhi. There is a transaction for more than Rs. 19.3 lacks during the short period of approx 2.5 years i.e. April 03 to Oct-05.*

vii. *Collectively in her all three above mentioned saving accounts, there are transactions worth more than Rs. 63 lacs in a period of approx. 2½ years.*

viii. *She holds a Duplex Flat in Swarnim Vihar, Sectop-82 NOIDA in her name and a two bad room flat number A-136/6 IInd floor Basti Nijamudin, New Delhi. (The property is already attached by the Ld. Trial court vide order dated 20-02-2007)*

ix. *She also holds two vehicles bearing registration number DL-3C-Y-0532 TOYOTA QUALIS, and DL-2C-M-7384 SANTRO registered in her name.*

x. *There is a FD for Rs 15 Lacs in the name of her children Hassan Sheikh & Zuhaib Sheikh in Bombay Mercantile bank Darya Ganj Branch, Delhi.*

xi. *There is another FD for Rs 50,000/- in her name in J&K Bank Lajpat Nagar Delhi.*

xii. *Apart from above accused Zohra Sheikh was also holding a LIC policy No. 113641743(Sum assured Rs 20,00,000/- i.e. twenty lacs) in her name, instalment for Rs 65,167/- half yearly.”*

32. The aforesaid indicates that the applicant is in association with the prime accused since 1996 on account of being his second wife. She has knowingly handled the funds and properties generated/purchased from the

syndicate, and failed to prove that these properties are accounted for. She has disclosed and that she used to command the gang whenever Sharafat Sheikh went to jail with the help of her sister Fatima Ameen@ Rani and used to remove heavy cash from her, and her husband's, accounts and would get signed blank cheques from Sharafat when he was in Jail to avoid seizure and hardship. The investigation has revealed that she had procured two forged voter ID cards and was using one of them to meet Sharafat in jail. Two weapons have also been recovered from her after her arrest, out of which one DBBL gun 12 bore is unlicensed. This indicates that the applicant appears to have been working hand in glove with the crime syndicate of Sharafat Sheikhs.

33. Apart from the above, the material placed on record also includes the confessional statement of co accused Abdul Wajid, which is admissible u/s 18 of MCOCA. His statement evidences the fact that the wealth/properties in the name of Sharafat, Zohra and other co accused have been generated from illegal trade of narcotic drugs and from selling properties. He presently stands convicted vide order dated 21.01.2011 on the basis of his confessional statement pleading guilty.

34. Prima facie, the acts of the applicant herein comes within the definition of "abet" as defined in Section 2(1)(a) of MCOCA and, prima facie, establishes her role as a conspirator in assisting and managing the crime syndicate. She appears to be in possession of movable and immovable properties derived and obtained from commission of an organized crime syndicate, which she has not satisfactorily accounted for. The applicant has, therefore, failed to produce any reasonable grounds for believing that she is

not guilty of the offences she has been charged under. On the contrary, the materials brought on record, point to her role in the abetment of the offences by the crime syndicate.

35. The second condition for granting bail under Section 21(4) is that the applicant is not likely to commit any offence while on bail. The applicant, as aforementioned, transferred funds from the account of Sharafat Shiekh to hers. It is alleged that this was done to destroy evidence as against Sharafat in the present case. This resulted in section 201 IPC being charged against her. She had also, along with other co-accused tried to pressurize the Chartered Accountant of Sharafat to incorporate the vehicles, properties and income thereof in their pending income tax returns. Further, she had her voter ID cards forged and used them to meet her husband in jail, which attracted Section 471 IPC against her. If these allegations are taken to be true, an inference of the likelihood of the applicant accused committing an offence while on bail may be drawn. She has also been convicted in two criminal cases, one pertaining to kidnapping u/s 366, and the other for voluntarily causing hurt by dangerous weapons u/s 324.

36. I shall now deal with the submission of the applicant regarding release of an under trial prisoner, if he/she has undergone 50% period of incarceration. Ld. APP has opposed the applicability of this provision, since the maximum period of imprisonment for the charges framed against the accused is life imprisonment. Mr. Sharma placed on record the case of **Romesh Sharma** (supra) to submit that the minimum period of life imprisonment is 14 years, therefore, expiry of half of that period would give the applicant protection u/s 436A. This submission does not appeal to me,

since the Supreme Court in *Union of India vs. V. Sriharan*, (2016) 7 SCC 1, has interpreted life imprisonment to mean imprisonment for the rest of life of convict till his last breath. It is further established law that period of incarceration would not absolutely entitle the accused to be enlarged on bail in cases where the gravity of offence alleged is severe. Reliance may be placed on *Kalyan Chandra vs. Rajesh Rajan alias Pappu Yadav*, (2004) 7 SCC 528,. Moreover, Section 436A in its effect is not absolute since it is subject to the first proviso which empowers the court to continue the detention of the accused for a period longer than one-half of the maximum period of investigation.

37. The applicant Zohra disclosed that she married Sharafat, who is of a bad character in PS Nizamuddin and has been arrested in 75 criminal cases involving NDPS, Arms Act, theft, kidnapping, criminal intimidation, hurt etc., to enjoy his wealth and live lavishly knowing that the wealth owned by Sharafat was out of his illegal activities. She holds movable and immovable properties in her name, which she has failed to account for. She has, admittedly, commanded the gang when her husband went to jail. She and her family maintain a very lavish and fancy lifestyle. The charge-sheet filed against her concludes as follows:

“From the investigation conducted so far there is sufficient evidence against the accused Zohra Sheikh for acquiring and possessing unaccounted wealth, moveable and immoveable properties, which she could not account for satisfactorily through genuine source, on behalf of crime syndicate of Sharafat Sheikh, whereby committed an offence u/s 4 of MCOCA. She in connivance with crime syndicate leader and accused Sharafat Sheikh transferred heavy cash from the

account of Sharafat Sheikh from Bombay Merchatile Bank, Mahim , Mumbai, collected heavy cash worth Rs. 6.2 lacs and Demand Draft worth Rs.9.5 lacs from a Mumbai based builder Syed Intikhab Hassan, deposited in her own account and removed the cash from there with the purpose to tamper the vital evidence. She thereby committed an offence u/s 468/471/201/120-B IPC. She has also committed offence u/s 3/181 M.V. Act for driving vehicle without driving license at the time of her arrest.”

38. The fundamental right to individual liberty as enshrined under Article 21 of the Constitution of India must be balanced with the interest of the society. The Supreme Court in **Rajesh Ranjan Yadav v. CBI**, (2007) 1 SCC 70, has in para 16 observed that:

“16. We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society.”

39. The applicant has been roped in under very serious charges, and this Court is of the view that if she is let out on bail, she may tamper with the witnesses and the evidence, considering the stakes for the accused and her husband and she may even commit other offences. The grant of regular bail in a case concerning such serious nature and gravity of accusations in the face of the materials brought on record, may have an adverse impact not only in the progress of the case, but also on the trust that the society has reposed in the criminal justice system.

40. For all the aforesaid reasons, the present bail application is dismissed.

41. It is made clear that any observation made in this judgment shall not come in the way of the petitioner, and the trial court shall decide the case on its own merits.

(VIPIN SANGHI)
JUDGE

FEBRUARY 20, 2017