

interim custody of his vehicle and as such seeks grant of interim custody of MG Gloster Car (White Colour Model) bearing registration No.MH-03-DV-9333, Chasis No. MZ7KD63JF4H004275, Engine No. M9213013231, Hypothecated to – KOKAN Mercantile Co-op. Bank Ltd. Fuel Type Diesel, in favour of the appellant on any terms and conditions to the satisfaction of this Court.

3. Learned counsel for the appellant states that the appellant is the owner of the said vehicle i.e. MG Gloster Car, details of which are stated aforesaid. Learned counsel submits that the appellant was paying EMIs regularly to the bank, upto July 2022, however, has not paid EMI from July 2022, since the Car is in the custody of the police.

4. Today, the learned counsel for the appellant has tendered an affidavit-cum-undertaking of the appellant wherein in para 2, he has undertaken to pay all the arrears of the EMI, within 30 days from the date of release of the vehicle and has undertaken to pay the

balance EMI's regularly without any default. To the said affidavit is annexed the details of the EMI paid by the appellant, till date. The said affidavit-cum-undertaking is taken on record.

5. Learned APP opposes the appeal. She submits that no doubt the vehicle stands in the name of the appellant, however, one of the accused i.e. Amit Bhogle (gang leader) had purchased the said vehicle in the name of the appellant. Apart from the said statement made by the learned APP, there is no document on record to that effect. Learned APP however, does not dispute the fact that although the vehicle was allegedly purchased by the gang leader, the same stands in the name of the appellant and that the appellant has paid EMIs' of the said vehicle, upto 30th July 2022.

6. Perused the papers. Admittedly the appellant is not an accused in the said case. Infact, the appellant is a witness in the said case. The vehicle i.e. MG Gloster Car was seized in FIR No.558 of 2021, registered with the Bhandup Police Station, which case was

subsequently transferred to D.C.B. C.I.D. Unit – VII, Ghatkopar, Mumbai, (renumbered as C.R. No.89 of 2021). It is the prosecution case, that the vehicle was seized from Amit Bhogle (gang leader) and that the same was being used by him. The said vehicle appears to have been seized in view of what was disclosed by Amit Bhogle, during investigation. According to the prosecution, Amit Bhogle had given an amount of Rs.14,50,000/- to the appellant for purchasing the said vehicle and that the said vehicle was used by Amit Bhogle. *Prima facie*, it appears from the registered document that the appellant is the registered owner of the said vehicle. It is for the prosecution to prove the same during trial. The question that arises for consideration in the aforesaid appeal is with respect to interim custody of the vehicle since the vehicle is lying with the D.C.B. C.I.D., since 2021. It is the appellant's case that he is the lawful owner of the vehicle and that the vehicle stands in his name. The vehicle documents show the appellant as the owner. It is also the appellant's case that he has been paying the EMI to the bank. The appellant has produced the bank statement evidencing the payment of EMI upto 30th July 2022 with respect to

the said vehicle, which was taken on loan from Kokan Mercantile Co-op. Bank Ltd. As noted above, the appellant has filed his affidavit-cum-undertaking. In para 2 of the said affidavit-cum-undertaking, the appellant has stated as under:-

“2. I say that I have regularly paid the EMI’s till 30.07.2022. I say that I have not paid EMI’s since 30.07.2022. I hereby undertake to clear entire arrears of the EMI’s within 30 days from date of release of the Vehicle and I further undertake to pay balance EMI’s regularly without any default. Annexed Hereto and Marked as Exhibit “A” is the copy of the Loan Statement.”

7. Considering the aforesaid and in particular, as the vehicle would be lying idle, the interim custody of the vehicle can be granted to the appellant.

8. Accordingly, the appeal is allowed on the following terms and conditions:-

ORDER

- (i) The impugned order dated 5th December 2022, passed by the learned Additional Sessions Judge & Special Judge under MCOC Act, Greater Mumbai, below Exhibit – 6 in Sessions Case

No.645 of 2022, is quashed and set aside;

- (ii) The appellant is granted interim custody of MG Gloster Car (White Colour Model) bearing registration No.MH-03-DV-9333, Chasis No. MZ7KD63JF4H004275, Engine No. M9213013231, on executing Supratnama/personal bond of Rs.30,00,000/-, to the satisfaction of the trial Court;
- (iii) The appellant shall file an undertaking in the trial Court that he will not sell the aforesaid vehicle or will not create any third party rights in the said vehicle; that he shall produce the aforesaid vehicle, as and when, directed by the trial Court; and, that he will not change the identity of the vehicle. The said undertaking to be filed in the trial Court before the release of the vehicle.

9. The Appeal is allowed in the aforesaid terms and is accordingly disposed of.

All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.