

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

CRIMINAL APPLICATION (APL) NO. 836 OF 2024

Sandeep Govind Walke
(Presently in Yerwada Jail)
Through his legal heir :-
(Pooja Sandeep Walke)
Age : 30 years, Occ. Housewife,
R/at : Sr.no.23/1, Jai Ganesh Nagar,
Vidhate Vasti, Baner, Pune – 411 045. Petitioner

Vs.

The State of Maharashtra
at the instance of Chaturshringi Police Station
in C.R.No.325 of 2021 Respondents

Mr. Shailesh S. Kharat a/w. Mr. Tanmay Kate for the Applicant.
Mr. Raja Thakare, ASG a/w. Mr. Siddharth Jagusthe and
Ms. R.V. Newton, APP for the State.
Mr. Ganesh Dhamane, API, present.

CORAM : SHYAM C. CHANDAK, J.

DATED : 02nd DECEMBER, 2024.

JUDGMENT :-

. Present Application seeking for quashing and setting-aside of the impugned Order dated 15th June, 2024 passed by the learned Additional Sessions Judge and Special Judge, MCOC Act, Pune below Application at Exhibit-11, in Special Case (MCOC) No.29/2022, thereby said Application at Exhibit-11 is rejected.

2) Heard Mr. Kharat, learned Advocate for the Applicant and Mr. Thakare, learned Addl. Solicitor General for the State. Perused the record.

3) **Rule.** Rule made returnable forthwith. With consent of the

learned counsel for the respective parties, heard finally.

4) The facts giving rise to this Application are that, sometimes in the month of December 2020, certain accused persons named in the FIR bearing C.R.No.325/2021, registered with Chaturshrungi Police Station, Pune under Sections 307, 386, 341, 201, 204, 206, 120(B), 506 (2), 141, 143, 147, 148 and 149 of the Indian Penal Code; Sections 3 (25) of the Arms Act; Sections 37 (1), 37 (3) and 135 of Maharashtra Police Act, 1951; Section 39 of the Maharashtra Money Lending (Regulation) Act, 2024, called the informant's son at the house of Accused No.1 due to a dispute over money borrowed by the informant's son from the Accused No.1. At that time the Accused No.1 fired his revolver in the air. Other accused namely Ganesh Gaikwad and Deepak Gaware pointed their revolver at the head of informant's son and attempted to take his life. The accused persons also forcefully obtained signatures of the informant and her son on blank papers. Then, the accused persons abducted the informant and her son and wrongly confined them in the house of accused Sonali Gaware, at Deccan, Pune.

5) During investigation, police seized the aforesaid car used in the offence i.e., Toyota Crysta Innova Car bearing registration No.MH-12/TE-148 ('the car', for short). The Applicant being registered owner of the car filed the Application at Exhibit-11 in the said case and sought for interim custody of the car. The prosecution filed its say and opposed the Application. The learned Judge of the trial Court heard the parties and held that, there are allegations of illegal money lending against the Accused No.1. There is

specific allegation that the car was acquired from illegal gain. Therefore, and considering the nature of the offence, the said car cannot be returned to the Applicant/accused or anyone on his behalf.

6) Mr. Kharat, the learned Advocate for Applicant submitted that the aforesaid case is pending for trial. The car is not needed for further investigation. It is a question of trial as to whether the car was purchased from the gains of the criminal acts or not. The car is required for personal use of the Applicant's family. Since its seizure, the car is lying in the custody of police, without any maintenance. It is open to the sky and adverse climatic conditions. As such, every passing day the car is ruining its road worthiness. The Applicant is ready to abide by any condition for releasing the car. Lastly, he submitted that the Applicant is in jail, so, if the car is released, then it may be handed over to Mrs. Pooja Sandeep Walke, who is the wife of the Applicant. However, these aspects are not considered by the learned Judge of the trial Court. Therefore, the impugned Order is erroneous and liable to be set-aside.

7) As against this, Mr. Thakare, learned ASG submitted that the Accused No.1 is involved in lending money illegally and in case there is any default in payment of money, the Accused No.1 would threaten and assault to, use criminal force etc. against the borrowers and recover his money from them at gunpoint. Same method is applied in this case. The Applicant is involved in the offence along with the Accused No.1. He submits that, considering the facts of the case, the Respondent would take steps so that

during the period of the trial the car remained attached as provided in Section 20 sub-Section (2) the MCOC Act.

8) The impugned Order is silent as to whether the car should remain in the custody of the police or not, for the trial purpose. And if not, then why the car should ruin its worth in all respect. The car is not needed for further investigation. Before releasing the car, if its present condition is documented by recording a panchnama and taking photos, it will help to prove the necessary fact in the Court. The car was seized in the year 2021. Yet, the Respondent police have not taken any step to attach the car, as above. The Respondent has not disputed that the Applicant is registered owner of the car. The car is costly. If the car is not released on certain conditions, the depreciation of the car would be more and, at the end of the trial it may fetch very less value, perhaps minimal. Therefore, considering the submissions and the settled principle of law in the field, there is no hurdle to release the car in the interim custody of the Applicant. These aspects are not considered by the trial Court. In view thereof, the impugned Order is not sustainable in law and it is liable to be quashed and set aside. The Application succeeds, thus. Hence, Order :-

- ORDER -

- (i) Application is allowed.
- (ii) The impugned Order dated 15th June, 2024 passed by the learned Additional Sessions Judge and Special Judge, MCOC Act, Pune below Application at Exhibit-11, in Special Case (MCOC) No.29/2022 is quashed and set aside.

(iii) The Respondent Police Station is directed to release the Toyota Crysta Innova Car bearing regn. No.MH-12/TE-148, Chassis No. MBJAB3EM102541812 and Engine No.2GDA455255 in the interim custody of the Applicant **Sandeep Govind Walke** on his executing a *Supurtnama* bond in the sum of Rs.28,00,000/-, with one or two surety/ies in the like amount, on the following conditions :-

(a) Before release of the car, the Respondent police shall record a detailed panchnama of the actual condition of the car and take photos of the car from all the angles to preserve its identity for proof during the course of trial.

(b) The said panchnama and the photos shall be placed on the record of Special Case (MCOC) No.29/2022, as evidence, for the sake of trial.

(c) The Applicant shall not directly or indirectly sale, gift, rent, or transfer the ownership of the car, make any change in the car until further Orders of the trial Court or the disposal of the aforesaid case, as the case may be.

(d) If the car is handed over in the custody of the Applicant's wife namely **Mrs. Pooja Sandeep Walke**, then police shall get a proper acknowledgment of receipt form her.

10) Application stands disposed of in aforesaid terms. Rule is made absolute.

PREETI
HEERO
JAYANI

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(SHYAM C. CHANDAK, J.)