

Order below Exh.01 in Criminal Misc. Application No. 645/2022.

Perused the application and the documents filed along with it.

2. The I.O. has filed his say at Exh.5 and submitted that Eicher Truck bearing registration no. UP-92-AT-0995 was seized in C.R.No.481/2022 for the offence p.u.s. 279,304(A),337,338 of I.P.C. However, he have raised the objection that the accused is the resident of other state. He will not produced the vehicle for the inquiry. Therefore, prays not to deliver the possession to the applicant. Learned A.P.P. has filed his say on the application and raised the objection on the ground that the original document of ownership are not produced. The vehicle is important during the evidence. There is possibility of utilizing vehicle in identical offence and possibility of alienation and change in appearance. Therefore, prays to reject the application.

3. The applicant in support of his application, produced following documents on record

- 1) Verified coy of certificate of registration.
- 2) Xerox copy of FIR
- 3) verified copy of transport permit.
- 4) Xerox Copy of insurance certificate.

4. After perusal of verified copy of certificate of registration, it appears that vehicle no UP-92-AT-0995 is registered on the name of Mr. Nasir Khan Munna Khan i.e. applicant. The applicant is appears to be the registered owner of he vehicle. It appears from the say of IO that the accused is absconded. However, it reveals from the say of I.O. that the alleged vehicle was seized in the offence punishable under Sections 279, 304(A), 337, 338 of I.P.C. Hon'ble Apex Court in **Jayprakash Vs. National Insurance Co. Ltd. and Ors.,2010(2) SCC(Cri)1075** had held in para no.41 that “ *where there is no insurance cover for vehicle, the owner should be directed to offer security or deposit an amount, adequate to satisfy the award that may be ultimately passed as a condition precedent for release of seized vehicle involved in the accident.*” In the present matter, alleged vehicle was seized in the offence wherein someone was died. However, the applicant have produced copy of insurance. After perusal of the same, it appears that the insurance is valid from 09.09.2022 to 08.09.2023. The alleged offence was of 14.09.2022. Therefore it is clear that insurance policy was valid at the time of accident. The photographs can be used for the purpose of identification during the trial. Therefore, applicant is entitled to receive the property. No purpose will be served in keeping the seized property at the Police Station. The possibility of the damage to the property can not be ruled out if kept lying in the Police Station.

5. Considering the nature of the seized property, its protection, guarding and safe custody is not reasonably practicable. Looking into the nature of the seized property, it may lose its worth and value. As the applicant has shown entitlement to receive the seized property and as no claimant other than the applicant came forward, he is entitled for the possession of the same. So far as the apprehension raised by the IO and A.P.P. is concerned, that can be taken care by imposing appropriate conditions. In the result, following order is passed.

ORDER

1. The application is allowed.
2. The property Truck bearing registration no. UP-92-AT-0995 seized in C.R. No.481/2022 of Chalisgaon (Rural) Police Station be handed over to the applicant namely Nasir Khan Munna Khan on executing indemnity bond of Rs.20,00,000/-(Rs. Twenty lakh only.) before I.O.
3. The applicant shall also furnish one guarantor for purpose of failure of the applicant to comply with the condition then guarantor will liable for the same.
4. The applicant to undertake that, he shall not sell or transfer the property without the prior permission of the Court. The applicant to maintain and preserve the property in all respects.
5. The applicant shall produce the property in the Court as and when directed.

6. I.O. is directed to take photographs of vehicle from each side at the costs of applicant and to prepare a panchnama before handing over the possession of the vehicle to the applicant. I.O is further directed to file said photographs and panchnama along with final report.

Date: 14.10.2022.

(A.H.Shaikh)
Judicial Magistrate, First Class,
(Court No.3), Chalisgaon.