

IN THE COURT OF THE SESSIONS JUDGE, LUCKNOW.

PRESENT : RAM MANOHAR NARAYAN MISHRA, H.J.S.

DISPOSAL OF APPLICATION B-1 DATED: NOVEMBER 18TH, 2021.

Ajay Bahadur,
S/O Durga Prasad,
R/O Thakurayin Kheda, Bannawa,
P.S. Badharawan, District Raebareli, UP.

.....**Applicant.**

Versus

State of Uttar Pradesh.

.....**Prosecution/Opposite Party.**

in re:

SESSIONS TRIAL NUMBER : 1584/2021.

C.N.R. NUMBER : UPLK01-013923-2021.

State of Uttar Pradesh

Versus

Umesh.

Crime Number: 338/2021.

Under Sections: 279, 337, 338
and 304 of the Indian Penal
Code.

Police Station: Mohanlalganj,

District: Lucknow.

10.01.2022.

Taken up today.

Learned counsel for the applicant as well as learned D.G.C.
(Criminal) for State of Uttar Pradesh present.

Heard on B-1 which is an application praying for release of vehicle
bearing *regn.* UP33BC8470 Eicher Tractor (Agricultural), supported with
an affidavit, moved by applicant Ajay Bahadur.

Brief facts of the case are that first informant Jitendra S/O
Poornamasi got lodged an F.I.R. dated 12.08.2021 at 15:55 hours
alleging therein that on 12.08.2021 while his brother Shivam Rawat,
aged about 18 years, accompanied with one Raj, was going to his
relative's place at Gharhi Mawaiyya from a motorcycle bearing *regn.*
UP32DB0242, a tractor being *regn.* UP33BC8470, which was negligently
driven by Umesh S/O Khushiram hit the motorcycle whereupon one
person ricocheted and sustained normal injuries whereas brother of first
informant came beneath the tyre of the tractor and became unconscious.
Said person was rushed to the hospital where he was declared dead.

Initially F.I.R. was lodged under Sections 279, 337, 338 and 304-A
of the Indian Penal Code, however, during investigation, Section 304 of
the Indian Penal Code was added replacing Section 304-A of the Indian
Penal Code on the basis of evidences collected during investigation.

Learned counsel for the applicant has submitted that while tractor
bearing *regn.* UP33BC8470 Eicher Tractor (Agricultural) was *en-route*
from Bijnour to Thakurayin Kheda, Bannawa, P.S. Badharaawan, District
Raebareli, U.P., it met with an accident from a bike bearing *regn.*
UP32DB0242 following which first informant Jitendra S/O Poornamasi

got lodged an F.I.R. dated 12.08.2021 at Crime Number 338/2021 under Sections 279, 337, 338 and 304 of the Indian Penal Code with P.S. Mohanlalganj, Lucknow.

The tractor in question which has been seized by Police in present offence was technically examined by R.I.MT on 06.09.2021 and its engine, body parts and other devices alongwith tyres were found satisfactory.

Applicant has stated that his tractor was seized on 12.08.2021 by Police. He is registered owner of the vehicle. F.I.R. was lodged against driver of the Tractor namely Umesh S/O Khushiram. Vehicle is lying in open at P.S. Mohanlalganj, Lucknow due to which its condition is deteriorating day in and out and it is in danger of being scrapped, if left lying in Police Station in present condition. Applicant is not accused in the case. Tractor may kindly be released in favour of the applicant subject to appropriate conditions.

Learned D.G.C. (Criminal) for State of Uttar Pradesh has opposed the release application on the ground that the said tractor is a case property.

Keeping in view the facts and circumstances of the case, nature of offence, nature of allegations and the law laid down by Hon'ble Supreme Court in **Sundarbhai Ambalal Desai Versus State of Gujarat** reported in **2003(1) JIC 615(SC)** wherein Hon'ble Apex Court has ruled that whatever be the situation, it is of no use to keep seized vehicle at the Police Stations for a long period so it is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles, vehicle is liable to be released in favour of applicant, who is registered owner of the vehicle subject to conditions.

ORDER

Release application B-1 under Section 451 of Criminal Procedure Code is hereby **allowed**.

The tractor being *regn.* UP33BC8470 Eicher, seized by the Police in abovementioned case be directed to be released in custody of the applicant, registered owner, during pendency of the trial on execution of Personal Bond of Rs. 1,00,000/- and one surety of the like amount, with the condition that he will produce the tractor as and when required by the Court, during pendency of the Trial and he will not change the colour and shape of the vehicle in this period and he will not transfer the tractor in favour of any other person during pendency of the Trial.

Station House Officer of the P.S. concerned will prepare the photographs of the tractor at the cost of the applicant before releasing the same and will send it alongwith release report to this Court.

Date: 10.01.2022.

(Ram Manohar Narayan Mishra)
Sessions Judge,
Lucknow.