

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.37568 of 2012**

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1. Md. Yusuf Hanfi @ Mohd. Yunus Honfi S/O Late Hanif Hanfi Mohalla-  
Saraiyaganj, P.S.- Town, P.S.- Muzaffarpur, District- Muzaffarpur

.... .... Petitioner/s

Versus

1. The Union Of India Through Commissioner Of Customs, Bihar, Patna

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Om Prakash

For the Opposite Party/s : Mr. Raghiv Ahsan (Asst.Sg.)

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**CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA**  
**ORAL ORDER**

6 19-05-2015

Heard.

The learned counsel appearing for the Union of India through its Commissioner of Customs, Bihar in spite of having obtained adjournments earlier on the ground of seeking information for placing the same before this Court as to whether any confiscation proceeding had been initiated in respect of the truck bearing no.BR06G-0786 has not appeared today in spite of repeated calls.

This petition seeks the release of the mini truck bearing no. BR06G-0786 which was seized by the officials of the Customs Department, Motihari on account of carrying allegedly 500 K.Gs. of ganja. In respect of the seizure of ganja, a complaint petition was filed before the learned Special Judge, Motihari vide NDPS Case No.75 of 2011. It appears that a petition was filed by the owner of the vehicle on 28.02.2011 for release of the truck and

that petition was dismissed by the learned Ist Additional Sessions Judge, Motihari on the ground that the mini truck above said was liable to be confiscated.

The provision as regards confiscation of a vehicle which was used in transporting or importing in India any Narcotic Substance is laid down in Section 61 of the Narcotics Drugs and Psychotropic Substances Act (hereinafter referred to as 'the Act') and as may appear from the very language of the section, any vehicle or other articles including the seized narcotic substance or truck could be ordered to be confiscated by the Court. However, the procedure for confiscating the vehicle or other articles is contained in Section 63 of the Act and as may appear from that provision, the order of confiscation could be passed by the trial Court only after conclusion of the trial. Even if an accused has been acquitted or discharged that is no bar to confiscate the vehicle which could have been used in commission of the offence. For passing an order under Section 63 of the Act, it is provided by law that before ordering to confiscate the property the owner thereof has to be given an opportunity of hearing by issuing a notice in that behalf and after recording the evidence, if any, which the owner of vehicle had desired to produce. It is further provided as may appear from the second proviso appended to Section 63 of the Act that in case of substance being such as to

speedy and natural decay, then in that case the Court may order the sale of the same and direct the sale proceeds to be put into safe custody.

While perusing the complaint petition, what appeared to me was that the owner of the vehicle, i.e., Md. Yusuf Hanfi @ Mohd. Yunus Honfi was issued notice on multiple occasions for appearance before the complainant and he appeared finally on 01.11.2010 and submitted before the complainant that he was permanently residing in Delhi and was carrying on business in eggs at Muzaffarpur and his business was being managed and run by one Suresh Kumar, his Manager. The owner had pointed out to the complainant that he did not know about the hiring of the vehicle and probably, it was the manager and the driver who had committed the mischief in letting the vehicle on hire which was used for smuggling of ganja. Being satisfied with the reasons shown by the petitioner who happened to be the owner of the vehicle that he was not there, he was not made an accused and his causes were accepted by the complainant.

It is true that the vehicle has been seized while importing in India the narcotics substance, like, ganja and also it may be confiscated as per the provision of the Act as per the provision of Section 63 thereof, but it may take some time as this Court could not get any informant even from the counsel of the petitioner as to

what the position of the trial was.

In that view of the matter, let the seized truck bearing No. BR06G-0786 be released to the petitioner on execution of a bond of rupees ten lacs with two sureties of the like amount each to the satisfaction of the learned 1<sup>st</sup> Additional Sessions Judge-cum-Special Judge, Motihari, East Champaran, in connection with N.D.P.S. Case No. 75 of 2011 with the following conditions:-

- I. The vehicle shall not be sold, alienated, leased or transferred by any mode by the petitioner to any one during the pendency of the trial.
- II. The vehicle shall be kept in a good running condition by the petitioner.
- III. As and when he is required by the Court concerned to produce the vehicle before it, he shall produce it within 24 hours of receiving the order in that behalf.
- IV. The sureties standing as such at the time of the release, must be solvent persons having sufficient means to act as such.

**(Dharnidhar Jha, J)**

B.Kr./-Saif

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