

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.737 of 2019**

Arising Out of PS. Case No.-561 Year-2018 Thana- GOPALGANJ TOWN District-
Gopalganj

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IMTEYAZ ALI @ IMTEYAJ ALI @ IMTIYAAZ ALI Son of Md. Hafij Shah @ Md. Hafij Sah @ Mohammad Hafij Sah @ Hafij Sah Resident of village- Arna Bazar, Police Station- Uchakagaon, District- Gopalganj through his father and natural Guardian, Md. Hafij Shah @ Md. Hafij Sah @ Mohammad Hafij Sah @ Hafij Sah, aged about 46 years, son of Shalim Sah, Resident of Village- Arna Bazar, Police Station- Uchakagaon, District- Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Lokesh Kumar Singh
For the Respondent/s : Mr.Harendra Prasad

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT**

Date : 16-12-2019

This revision application has been preferred against an order dated 29.03.2019 passed in Cr. Appeal no. 28/2019 by learned Sessions Judge, Gopalganj by which he confirmed the order refusing bail to the petitioner for the offence under sections 413 and 414/34 IPC who is juvenile in J.E. No. 148/2018 arising out of Gopalganj P.S. Case no. 561/2018 passed by Principal Magistrate, Juvenile Justice Board, Gopalganj dated 05.03.2019.

The brief fact of the case is that on 24.09.2018, informant-SI, Gopalganj police station along with police party was going to make raid against the warrantees and in that course, he received a secret information at Ambedkar Chowk at 6.30 P.M., and accordingly, he along with police party arrived at Blood bank in the premises of Sadar



Hospital, Gopalganj for necessary action and found that miscreants who were sitting on motorcycles, started their motorcycles and began to flee away having seen the police. They were apprehended by the police force but one of them succeeded in fleeing away by motorcycle. On being interrogation, apprehend persons disclosed their identity as accused Masoom Ali and a Glamour motorcycle bearing Registration No. BR-28/4949 was recovered from his possession. Yamaha motorcycle bearing Registration No. UP-53J/0539 was recovered from the possession of accused Chandan Kumar. A Discover motorcycle bearing Registration No. BR-28G/2436 was recovered from the possession of the petitioner. On demand of papers of motorcycle, the apprehended miscreants did not produce any paper but they disclosed that the person who succeeded in fleeing away, was accused Bhola Sah and was also possessing the stolen Hero Splender motorcycle. Thereafter separate seizure list as per recovery was prepared and a copy thereof was handed over to each miscreant and all four miscreants were made accused in this case in the allegation of keeping stolen motorcycles and dealing with the stolen property. Hence, the F.I.R.

It is submitted on behalf of the petitioner that the instant case was instituted under sections 413 and 414/34 IPC against the petitioner and three others and the petitioner was remanded in this case on 25.09.2018 and on the petition of petitioner, his case was separated and sent to the J.J.Board on 25.10.2018 and learned Principal Magistrate declared the petitioner juvenile vide order dated 13.02.2019 as his age



on the alleged date of occurrence was found 16 years 9 months and 04 days and thereafter, prayer for bail of the petitioner was refused vide impugned order.

Learned A.P.P. vehemently opposed the bail of petitioner and submitted that the impugned order is just and proper in interest of juvenile/petitioner and this revision petition is fit to be dismissed.

From careful reading of section 12 of the Act, it is clear that the same contemplates that normally delinquent should be released from custody when there is no reasonable grounds for believing that his release is likely to bring him under the influence of any known criminal or expose him to moral, physical and physiological danger or that his release would defeat the ends of justice.

The Board as well as learned court below have taken cognizance of the report of the Probation Officer inasmuch as it records age factor, lack of parental guidance as well as maintaining bad friend-circle. The courts below have however, not considered the recommendation regarding rehabilitation submitted by Probation Officer/Child Welfare. Clear recommendation is to release the child on probation in care and protection of his natural guardian for his best interest. In absence of any material to the contrary, petitioner being a juvenile, in conflict of law, should otherwise be released from custody.

It is under such circumstances, the impugned orders deserve to be quashed. Accordingly, both orders passed by the courts below are set aside. However, having regard to the report as well as legal position



emanating from section 12 of the Juvenile Justice (Care and Protection of Children) Act, this court only observe that before releasing the petitioner from custody, Board shall take an undertaking from his father and natural guardian to the extent that he will take all possible steps to ensure that the petitioner is kept in his safe custody and shall cooperate with the inquiry before the Juvenile Justice Board. The petitioner be released at once, after submission of such undertaking and sureties by his father.

With the aforesaid observations, this application stands allowed.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
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