

**(2011) 04 JH CK 0001**

**Jharkhand High Court**

**Case No:** Criminal Rev. No. 212 of 2011

Raj Kumar Tiwari

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision:** April 20, 2011

**Acts Referred:**

- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 12, 53
- Penal Code, 1860 (IPC) - Section 201, 302, 34, 364

**Hon'ble Judges:** Dilip kumar sinha, J

**Bench:** Single Bench

**Final Decision:** Allowed

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**Judgement**

D.K. Sinha, J.

This criminal revision has been filed u/s 53 of the Juvenile Justice(Care and Protection of Children) Act, 2000 for setting aside the order dated 5.2.2011 passed by the learned Additional Sessions Judge, F.T.C.-I, Palamu in Cr. Appeal No. 125 of 2010 by which the prayer for bail rejected by the Juvenile Justice Board, Palamu was affirmed for the alleged offence under Sections 302/201/364/34 of the Indian Penal Code and the appeal was dismissed.

2. The informant had raised suspicion about the complicity of the Petitioner and two others for the alleged murder of his son Prajwal who had gone outside to play but he did not return back till 7:00 p.m., however, he suspected that his son was kidnapped by the accused persons as his son was seen in the company of the Petitioner and two others by the witness Vinay Tiwari. On the recovery of the dead body Sections 302/201 were added, though the case was earlier instituted under Sections 364/34 of the Indian Penal Code.

3. Learned senior counsel Mr. Bajaj submitted that all the three accused were named merely on suspicion as it was stated by the witness Vinay Tiwari of having seen the victim in the company of the Petitioners at about 7:00 p.m. on the day of

missing. All the three were arrested and it was alleged that the confessional statement of the accused Alok Kumar was recorded at 12:30 p.m., confessional statement of Abhinav Tiwari was recorded at 1:00 p.m. and lastly, the confessional statement of the Petitioner Raj Kumar Tiwari was recorded at 1:25 p.m. which led to the discovery of the dead body from the bed of the river under the sand.

4. Learned senior counsel Mr. Bajaj further submitted that there could not be a single recovery pursuant to the confessional statement of the three different accused persons at three different stages. The accused Alok Kumar, if at all, had confessed his guilt which led to the discovery of the dead body it shall be presumed that pursuant to his confessional statement the dead body was recovered and therefore, the Petitioner Raj Kumar Tiwari, whose confessional statement was recorded at 1:25 p.m., cannot be held to be the confession of first person, on whose confession, discovery of relevant fact was made. There is no other legal evidence against the Petitioner so as to implicate him except suspicion raised by the father of the deceased.

5. Assailing the order impugned passed by the Additional Sessions Judge in Cr. Appeal No. 125 of 2010, the learned senior counsel submitted that prayer for bail of the Petitioner was refused by observing that his release would bring him in association with criminals and that his release would defeat the ends of justice, hence, his prayer for bail was dismissed.

6. Referring to paragraph-2 of the supplementary petition, which has been filed by the Petitioner, the learned senior counsel submitted that on 5.3.2011 at about 2:30 a.m. four criminals had broken open the grill of the remand home and forcibly had taken away the Petitioner along with them so that the Petitioner may not raise alarm and they had also extended threat to kill him in case he would raise alarm. When the Petitioner was left by the criminals, he returned back to his home and was brought before the reformatory by the deponent and other family members, thereafter the Petitioner voluntarily surrendered on 7.3.2011 and since then he is in remand home. Had there been any intention of the Petitioner to come in association with the criminals, he would not have surrendered in the court and there was no criminal antecedent against the Petitioner.

7. Finally, the learned senior counsel submitted that case of the Petitioner does not come within the proviso of Section 12 of the Act so as to deny the statutory right of his bail, which has been framed by way of benevolent legislation.

8. On the other hand, Mr. Sinha, the learned Counsel appearing on behalf of the informant opposed the bail on the ground that there was direct allegation against the Petitioner and on the confessional statements of the named accused, the dead body of the child was recovered from the bed of the river, which was buried under the sand.

9. Having regard to the facts and circumstances, I find substance in the argument of the learned senior counsel that the case of the Petitioner does not come within the proviso of Section 12 of the Act so as to deny the statutory right of his bail . I find that though he had escaped at the instance of the criminals but returned back and surrendered within two days of such escape and since then he is in remand home. The Petitioner Raj Kumar Tiwari therefore, is directed to be released on executing bail bond of Rs. 10000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of Juvenile Justice Board, Palamu with the conditions that parents of the Petitioner would be his bailors who would take care of him and produce the Petitioner preferably in the 1st week of each month till conclusion of inquiry or on the date suggested by the Board on each month.

10. Accordingly, this criminal revision is allowed.