

HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU

HC(W) No. 6/2009

Date of Decision: 25.11.2010

Nazir Ahmed	VS.	State & Ors.
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Coram:

MR. JUSTICE J.P.SINGH, JUDGE.

APPEARING COUNSEL:

For Petitioner : Mr. Sheikh Altaf Hussain, Advocate.

For Respondents : Mr. Gagan Basotra, AAG.

i)	Whether to be reported in Press/Journal/Media	:	Yes/No
ii)	Whether to be reported in Digest/Journal	:	Yes/No

Nazir Ahmed has approached this Court through his father Mohammad Yousaf for setting him to liberty quashing District Magistrate, Reasi's order No.PSA/2009/11 dated 23.11.2009, whereby he was ordered to be detained in preventive custody for a period of twenty four months.

The detenu's plea that he was in judicial custody in case arising out of FIR No.20/2009 registered under Sections 302/120-B RPC at Police Station, Mahore and there was no likelihood of his release on bail, in that, neither had he applied for such consideration nor was there any likelihood of his release in the offences which entailed punishment for death or imprisonment for life, so the exercise of power by the District Magistrate for his detention in preventive custody, was a result of non-application of mind, hence illegal, is contested by the State urging that the track record of the detenu warranted preventive action so as to prevent him from indulging in

activities prejudicial and detrimental to the maintenance of Law and Order in the area of village Haribala (Gulabgarh), Mahore and the detention of the petitioner could not thus be faulted, in the facts and circumstances of the case.

I have considered the submissions of the detenu's learned counsel and the learned State counsel. The Detention Records too have been perused.

It is no longer *res integra* that a person though in custody may also be detained in Preventive Custody, to prevent him from acting in any manner prejudicial to the activities for which preventive detention may be warranted under any law for the time being in force. There is, however, a caveat to it that the Detaining Authority, in such a case, should be satisfied that the detenu was likely to come out of the custody and indulge in activities for which his detention may be warranted under law. Such satisfaction may be drawn on material sufficient for recording such satisfaction and not on mere *ipsi dixit* of the Detaining Authority.

Neither the records of the Detaining Authority nor do the Affidavits filed by the District Magistrate and the Superintendent of Police indicate about any such material, on the basis whereof, such a satisfaction could have been recorded that the detenu was likely to be released from Judicial Custody, where he was facing trial for Murder, and when so released, would indulge in activities prejudicial to the security of the State.

It is probably for this reason that the Detaining Authority has indicated in the grounds of detention only about his apprehension rather than satisfaction that the petitioner was likely to be released on bail and his mind

was still bent upon to remain indulged in the terrorist activities. The Detaining Authority's indication in the grounds of detention that the detenu's mind was still bent upon to remain indulged in the terrorist activities, is not even supported by the Police Dossier, in that, there is no such allegation in the Dossier about the state of mind of the detenu.

All this, therefore, indicates that the District Magistrate has acted illegally in exercising jurisdiction under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 in directing the preventive detention of the petitioner, when there was absolutely no material with him to record satisfaction that the petitioner was likely to be released from judicial custody and would indulge in activities prejudicial to the security of the State, when so released.

District Magistrate's non-application of mind in directing the petitioner's detention is, thus, writ large warranting quashing of the Detention Order.

District Magistrate, Reasi's order No.PSA/2009/11 dated 23.11.2009 is, accordingly, quashed.

This Petition, therefore, succeeds, and is allowed. A direction shall issue to the respondents to release the petitioner forthwith from the preventive custody.

Detention records be returned to the learned State counsel.

(J. P. Singh)
Judge

Jammu.
25.11.2010
Vinod.