

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

HC(W) No. 49/2011

Date of Decision: 01.12.2011

Roshan Din Vs. District Magistrate, Kathua & Ors.

Coram:

MR. JUSTICE J.P.SINGH.

APPEARING COUNSEL:

For Petitioner : Mr. Mohd. Shafi, father of detenu
present in person.

For Respondents : Mr. B.R.Chandan, GA.

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| i) | Whether to be reported
in Press/Media | : | Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No |
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Roshan Din has filed this Petition through his father Mohd. Shafi questioning District Magistrate, Kathua's order No. PSA/75 dated 27.06.2011, whereby he was ordered to be detained in preventive custody under Section 8 of the Jammu and Kashmir Public Safety Act, 1978.

Perused the Detention records made available by learned State counsel.

Roshan Din has been ordered to be detained on the ground that he was involved in illegal import/export of bovine animals from and to District Kathua in violation of the orders issued by District Magistrate, Kathua and his acts were prejudicial and detrimental to the maintenance of public order.

Learned District Magistrate has satisfied himself on the basis of the material supplied to him by District Police Headquarters, Kathua, which is founded on FIR Nos. 08, 136, 154 of 2009, besides 03 of 2010 indicating commission of offences punishable under

Sections 188 RPC and 3/5 of the Prevention of Cruelty to Animals Act, 1990, by the detenu.

As indicated in the Detention records, the Detention order was executed on July 18, 2011.

The last FIR registered against the detenu pertains to the occurrence of 7th January, 2010. Rest of the FIRs pertain to petitioner's alleged activities of illegally import/export of bovine animals in February, 2009 and June, 2009.

The grounds of detention formulated by the District Magistrate are significantly silent about the detenu's activities after January, 2010.

The District Magistrate, therefore, appears to be unaware about the detenu's activities after January 2010.

In the absence of any information or material with the District Magistrate about detenu's activities after January, 2010, his detention in preventive custody for his alleged activities of February, 2009, June 2009 and January, 2010, may not be warranted, in that, a person may be deprived of his right to personal liberty only if there was material available with the Detaining Authority that the person sought to be detained was likely to indulge in activities for which his detention may be warranted with a view to prevent him, from acting in any manner prejudicial to the security of the State, maintenance of public order or indulging in smuggling of timber or liquor.

The Detaining Authority being unaware about detenu's activities from January 2010 until issuance of Detention Order, was not, therefore, justified in directing Roshan Din's detention in preventive custody in January, 2011 additionally because even after issuing the order, no steps appear to have been taken for executing the Detention Order for more than 20 days. Delay in non-execution of the Detention order remains unexplained.

The District Magistrate's order curtailing detenu's liberty without there being any material with him as to detenu's likelihood of indulging in activities for which his detention in preventive custody may be warranted under law cannot, therefore, be sustained on stale grounds.

For all what has been said above, Roshan Din's detention in preventive custody is found illegal.

This Petition, therefore, succeeds and is, accordingly, allowed quashing District Magistrate, Kathua's Order No. PSA/75 dated 27.06.2011.

A direction shall accordingly issue to the respondents to set the petitioner to liberty forthwith unless required in any other case.

Detention records be returned to the State counsel.

(J. P. Singh)
Judge

Jammu:
01.12.2011
Pawan Chopra