

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

HC(W) No. 47/2011

Date of Decision: 01.12.2011

Nazir Ahmad

vs.

State & anr.

Coram:

MR. JUSTICE J.P.SINGH.

APPEARING COUNSEL:

For Petitioner : Mr. Nawab Din, father of detenu
present in person.

For Respondents : Mr. Gagan Bastora, AAG.

- i) Whether to be reported in Press/Media : Yes/No

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

Nazir Ahmad's detention in preventive custody ordered vide District Magistrate, Kathua's order No. PSA/76 dated 27.06.2011 is questioned by the detenu by this Petition filed through Nawab Din, his father.

Perused the Detention records made available by the learned State counsel.

Learned District Magistrate, Kathua has directed Nazir Ahmad's detention to prevent from indulging in criminal activities which are considered prejudicial and detrimental to the maintenance of public order. The detenue is indicated a habitual smuggler of bovine animals and the detention order is founded on his activities of 7.06.2008, 24.02.2008 & 11.05.2009 where he is stated to have indulged in smuggling of bovine animals

The grounds of detention do not indicate anything about petitioner's activities after his last objectionable activity of May 11, 2009 when case FIR

No. 63/2009 was registered against him at Police Station Rajbagh under Section 188 RPC.

The District Magistrate being unaware about detenu's recent activities has, therefore, acted illegally in curtailing detenu's liberty on the basis of his alleged activities of 2006, 2008 & May 2009.

Jurisdiction and power under Section 8 of the Jammu and Kashmir Public Safety Act, 1978 is contemplated for its exercise only on the basis of recent activities of the person or on the basis of some apprehension that the person sought to be detained may indulge in activities prejudicial to the security of the State, maintenance of public order or in smuggling of timber or liquor.

Order No. PSA/76 dated 27.06.2011 issued by District Magistrate, Kathua demonstrates complete non-application of mind by the District Magistrate.

District Magistrate's order directing Nazir Ahmad's detention in preventive custody based on stale grounds and without any material available with him indicating that the detenu was likely to indulge in activities for which his detention in preventive custody may be warranted, cannot, therefore, be sustained.

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

This Petition, therefore, succeeds and is, accordingly, allowed quashing District Magistrate, Kathua's order No. PSA/76 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