

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

HC (W) No. 4/2012
Cr.M.A No. 3/2012

Date of decision: 17.10.2012

Nazir Ahmed Shah v. State of J&K and ors.

Coram:

Mr. Justice J.P.Singh.

Appearing counsel:

For Petitioner(s) : Mr. Raghu Mehta, Advocate.
For Respondent(s) : Mr. Gagan Basotra, Sr.AAG.

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| i) | Whether approved for reporting
in Press/Media | : | Yes/No. |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No. |
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Nazir Ahmed Shah S/O Sh. Abdul Rashid has filed this Petition seeking quashing of District Magistrate, Udhampur's order No.PSA-2011/DMU/ JC/07 dated 19.12.2011 whereby he was ordered to be detained in preventive custody under section 8 of the Jammu and Kashmir Public Safety Act, 1978, on various grounds.

Considered the submissions of learned counsel for the parties and perused the detention records made available by the learned Senior Additional Advocate General.

Perusal of the Grounds of Detention on which the petitioner was ordered to be detained by the District Magistrate in exercise of the powers under Section 8 of the Jammu and Kashmir Public Safety Act, 1978, demonstrates that what weighed with the Detaining Authority was the alleged past

conduct of the petitioner and records connected therewith, which was construed as threat to public peace, tranquility and maintenance of public order. The Detaining Authority has, however, failed to record any satisfaction that the detenu was likely to repeat his activities or indulge in such activities that may be prejudicial to public peace, tranquility and maintenance of public order and such activities were, therefore, required to be prevented.

The *sine qua non* for curtailing the liberty of a person for his detention in preventive custody is the likelihood of such person's indulgence in activities for which his detention in preventive custody be warranted under the laws in force.

Although, the past conduct and activities of such person may be germane to record requisite satisfaction of such person's likelihood of indulging in such activities warranting his detention in preventive custody, but that alone may not be sufficient for his detention in preventive custody, unless the Detaining Authority was satisfied of detenu's likelihood of indulgence in such activities that may be prejudicial to the maintenance of public order.

The omission of the District Magistrate in recording any such satisfaction in the Grounds of Detention that the detenu was likely to indulge in activities prejudicial to the public peace, tranquility

and maintenance of public order, renders Nazir Ahmed's detention illegal.

As this Petition succeeds only on the above plea of the detenu, so there is no need to deal with other submissions made by detenu's learned counsel.

This Petition accordingly succeeds and is, therefore, allowed quashing petitioner's detention in preventive custody. District Magistrate, Udhampur's order No.PSA-2011/DMU/JC/07 dated 19.12.2011 which wrongly records Abid Hussain Shah S/o Sh. Nazir Ahmed, in place of the detenu, pursuant whereto Nazir Ahmed Shah was detained in preventive custody shall stand accordingly quashed.

A direction shall issue to the State-respondents to release Nazir Ahmed Shah S/o Sh. Abdul Rashid from preventive custody, if not required in any other case.

Detention Records be returned to the learned State counsel.

**(J.P.Singh)
Judge**

Jammu:
17.10.2012
Vinod.