

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH****Bench: Justice Sanjeev Kumar****Date of Decision: 30<sup>th</sup> May 2024**

Case No. :

HABEAS CORPUS PETITION NO. 86 OF 2023

**APPELLANT(S): SWARNA DEVI .....Petitioner****VERSUS****RESPONDENT(S): UT OF JAMMU & KASHMIR AND ORS.****.....Respondents****Legislation:**

Section 8(1)(a) of the Jammu and Kashmir Public Safety Act, 1978

**Subject:** Petition challenging the preventive detention of the petitioner, Swarna Devi, under the Jammu and Kashmir Public Safety Act, 1978, citing her involvement in criminal activities prejudicial to public order, including pushing young girls into forced prostitution and involvement in multiple FIRs.

**Headnotes:**

Preventive Detention – Grounds of Detention – Petitioner challenged her detention under the Jammu and Kashmir Public Safety Act – Alleged involvement in pushing young girls into forced prostitution and other criminal activities – Six FIRs registered against the petitioner – Detention order justified by Detaining Authority on grounds of public order disturbance – Petitioner’s criminal activities created fear and insecurity among public – Preventive detention upheld despite petitioner’s challenge based on procedural grounds [Paras 1-14].

Law and Order vs. Public Order – Distinction between law and order and public order emphasized – Criminal activities impacting community at large fall under public order – Reference to Supreme Court’s judgment in Pushkar Mukharjee v. State of West Bengal – Court upheld preventive detention due to impact on public order, despite petitioner’s bail in previous criminal cases [Paras 8-10].

Procedural Safeguards – Compliance with procedural safeguards under the Public Safety Act – Petitioner provided with grounds of detention and dossier – No procedural violations found – Petition dismissed [Paras 12-13].

Decision: Writ Petition Dismissed – Held – Preventive detention order upheld – Court found no merit in the petition and justified detention under the Public Safety Act [Para 14].

**Referred Cases:**

- Pushkar Mukharjee v. State of West Bengal, AIR 1970 SC 852
- D.K. Basu v. State of West Bengal, AIR 1997 SC 610

Representing Advocates:

For Petitioner: Mr. Abhishek Singh Parihar, Advocate

For Respondents: Mr. Pawan Dev Singh, Dy. AG

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## **JUDGMENT**

1. Impugned in this petition, filed for issuance of a writ in the nature of habeas corpus, is an order of detention bearing No. 17/PSA of 2023 dated 01.10.2023 ["impugned detention order"] passed by the District Magistrate, Jammu ["the Detaining Authority"] whereby the petitioner has been placed under detention with a view to preventing her from acting in any manner prejudicial to the maintenance of public order.
2. The impugned order of detention has been passed by the Detaining Authority in the exercise of power vested in it under Section 8 (1) (a) of the Jammu and Kashmir Public Safety Act, 1978. The detention of the petitioner is ordered primarily on the ground that she a notorious criminal habitual of pushing young girls into forced prostitution, in that, six FIRs i.e. (i) FIR No. 01/2016 under Sections 341/323/34 RPC, (ii) FIR No. 02/2016 under Section 332/353/147 RPC, (iii) FIR No. 94/2016 under Sections 376/120-B RPC, (iv) FIR No. 88/2022 under Sections 3/4/5/7 IT Act, 382/341/323/504 IPC, (v) FIR No. 93/2022 under Sections 452/323/382/504/506 IPC and (vi) FIR No. 32/2023 under Sections 366-A/342/344/34 IPC, Section 4/6/16 of POCSO Act and Section 5/6/7/18 ITPA, stand registered in Police Stations, Bagh-e-Bahu and Channi Himmat, Jammu and final reports in respect to four FIRs have already been presented before the competent courts of law after investigation, whereas investigation with regard to two FIRs is still going on.
3. On the basis of relevant material supplied by the District Police, the Detaining Authority arrived at subjective satisfaction that the petitioner is a notorious criminal habitual of pushing young girls into forced prostitution

and that the continuous criminal activities of the petitioner are highly prejudicial and detrimental to maintenance of public order. The detaining authority has also come to a conclusion that since the people of the area are fed up with the criminal activities of the petitioner, such as drug smuggling/abuse/prostitution which is influencing and entrapping the young generation, especially women in illegal drug abuse and prostitution. The petitioner is roaming freely with her goons and threatening the common masses to remain mum about her activities and has thus created an environment of hatred and insecurity amongst the common public. Her activities have the potential of shaking confidence of the masses in the maintenance of public order. Furthermore she has become necessary to detain the petitioner as she has become imminent threat to the peaceful and orderly existence of society and, therefore, threat to public order. The substantive law has proved insufficient to deter the petitioner and curb her criminal activities. It is on the basis of this satisfaction drawn by the Detaining Authority, impugned detention order was passed and the petitioner was taken into preventive custody of the State.

4. The petitioner is aggrieved and has assailed the impugned order of detention, *inter alia*, on the following grounds:-

(i) That the impugned order suffers from non-application of mind. The respondent No.2 has, in the order of detention, referred to alleged commission of various offences and registration of FIRs, but has not spelled out how the involvement of the petitioner in the commission of different offences has the potential of disturbing the public order. The respondent No.2 has thus failed to make a distinction between what is prejudicial to public order and what is only a problem of law and order;

(ii) That the respondent No.2 has, in the grounds of detention,

mentioned that on being released on bail the petitioner has again indulged in criminal activities, however, the respondent No.2 has not made any mention as to whether the prosecution ever sought cancellation of bail of the petitioner on the ground that she, while being on bail in a case, has again committed the crime;

(iii) That the petitioner was not provided with the requisite material relied upon by the respondent No.2 to draw subjective satisfaction as a result whereof the petitioner was deprived of her right to make an effective representation to the Government against her detention;

(iv) That the respondent No.2 has violated the rules as laid down by Hon<sup>ble</sup> the Supreme Court in D. K. Basu v. State of West Bengal, AIR 1997 SC 610;

5. On being put on notice, the Detaining Authority has filed the reply affidavit and justified the detention of the petitioner on the grounds enumerated in the grounds of detention. It is submitted that from the year 2016 to 2024 the petitioner has been booked in as many as six different criminal cases which include causing injury to the public servant rape theft Trespass offences under IT Act and offences under Vauxhall Act . It is submitted that the crimes which are of the petitioner are highly prejudicial to the maintenance of public order And therefore the placing of the petitioner under preventive detention was imperative to safeguard the larger public interest. It is submitted that all the procedural safeguards laid down under the J and K public safety act have been adhered to. The petitioner has not only been supplied with the grounds of detention but she has been also read over and explained such grounds in the language she understands.

6. Having heard the learned Counsel for the parties and perused the material

on record, I am of the considered opinion that the consistency with which the petitioner has been indulging in crimes of various natures in particular crime against the women, the petitioner has created a sort of terror in the minds of the public at large living in the vicinity of the area of operation of the petitioner.

7. The primary allegation against the petitioner is that she is consistently indulging in Drugs and Immoral Trafficking and is alluring younger to prostitution. There is allegation that she has even spared the children to satisfy her insatiable greed for money. The six FIRs registered against the petitioner, the details whereof is given in the grounds of detention, indicates that the petitioner have been arrested several times but has come out on bail for one reason or the other. The offences which are allegedly committed by the petitioner, are under Section 376/363-A RPC, Section 4/6/60 of POCSO and Section 5/6/7 and 8 ITP Act. These FIRs are either registered in Police Station Bagh-e-Bahu or Police Station Channi Himat Jammu. It is because of the criminal activities the petitioner has been indulging in, there is sense of insecurity in the minds of the people residing nearby. The registration of FIRs against the petitioner and her arrest therein has not deterred the petitioner, who is allegedly an incorrigible criminal. The girls and women folk of the area are not in a position to move freely. As per the grounds of detention, the petitioner has created an atmosphere of fear and intimidation. This is evident from the narration given in the grounds of detention in respect of the allegations contained in the six FIRs registered over the period of time.
8. I am aware about the distinction between „law and order“ and „public order“. The registration of multiple FIRs against an individual may suggest that such individual has a cause for breach of law and order but in some cases where the criminal activities, the subject matter of the FIR, are such

which impact the even tempo of the community at large. In that event, the activities shall have the potential of breaching the public order. Reference in this regard is invited to the judgment of Hon<sup>ble</sup> the Supreme Court in **Pushkar Mukharjee and ors v. State of West Bengal, AIR 1970 SC 852**, wherein it is held thus:-

*“The expression “public order” in S.3 (1) of the Act does not take in every kind of infraction of law. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were, disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest must be drawn, the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect the public order comes within the scope of the Act. A District Magistrate is therefore entitled to take action under S 3(1) of the Act to prevent subversion of public order but not in aid of maintenance of law and order under ordinarily circumstances. The difference between the concepts of „public order“ and „law and order“ is similar to the distinction between „public“ and „private“ crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal. „Public“ and „Private“ crimes have been distinguished in the sense that some offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely.”*

9. It is thus trite that a mere disturbance of law and order leading to disorder is not necessarily sufficient for placing an individual under preventive

detention. However, the disturbance which affects the public order comes within the scope of the Act. The difference between „public order“ and „law and order“ is similar to the distinction between public and private crimes in the realm of criminal jurisprudence. In any case, the contravention of any law always affects law and order but before it can be said to be public order, it must affect the community and the public at large. It is thus not only the act committed by the person but the impact of such act which is the determining factor to decide about the imperative need to place such person under the preventive detention. If the criminal act of a citizen and the manner in which it is committed affects the even tempo of public life or affects the community at large, it would be an act falling within the sweep of term „public order“.

10. In the instant case the criminal activities, with which the petitioner is involved, are not only the criminal offences under various penal laws simplicitor but have the effect of affecting the community at large. There is a very serious allegation against the petitioner that she is running a sex racket and has been inducing gullible girls, sometimes even minor, to join prostitution. There are allegations that on some occasions the petitioner even forced minor girls into prostitution. It is the nature of the activities attributed to the petitioner and the manner in which these are being carried out in an organized manner that has the potential of disturbing the even tempo of life of general public, in particular, the people residing nearby.
11. In these circumstances, it is difficult to accept the argument of the learned counsel for the petitioner that the substantive law should have been allowed to take its course and that there was hardly any justification to put the petitioner under the preventive detention.
12. It is true that the petitioner has been booked for commission of various offences from time to time and has, for one reason or the other, been let off on bail but that does not take away the power of the Detaining Authority to

place the petitioner under preventive detention with a view to prevent her from indulging in the activities prejudicial to the maintenance of public order.

13. The plea of the petitioner that she was neither served with the order or detention or the grounds of detention is totally belied by the record. The complete set of papers, which included the order of detention, the grounds of detention as also the dossier consisting of total 130 leaves, has been supplied to the petitioner in District Jail Jammu against proper receipt under her signatures. The petitioner has not pointed out any other illegality or infirmity in the impugned order.
14. For the aforesaid reasons, I find no merit in this petition and the same is, accordingly, dismissed.

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