



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 4405/2025
URN: CRLMP / 10124U / 2025

Anand Singh Son Of Dayal Singh, Aged About 41 Years, Resident
Of 126, Mitra Nagar, Khirni Pathak, Jhotwara, Jaipur (Rajasthan).
(At Present In Judicial Custody In Central Jail, Jaipur).

-----Petitioner/Accused

Versus

Union Of India, (Directorate Of Revenue Intelligence), Regional
Unit, Jaipur Through Special Public Prosecutor.

-----Respondent



For Petitioner(s)	:	Mr.Ashvin Garg with Mr.Anutosh Mishra
For Respondent(s)	:	Mr.Jitendra Singh Poonia, SPP Mr.Manevendra Singh Shekhawat, PP

JUSTICE ANOOP KUMAR DHAND

Order

20/07/2026

Reportable

1. By way of filing the instant criminal misc. petition, a challenge has been led to the impugned order dated 03.06.2025, passed by the Special Judge, NDPS Cases, Jaipur Metropolitan-I, rejecting the application submitted by the petitioner, seeking directions to the Superintendent, Central Jail, Jaipur to allow the petitioner to execute a General Power of Attorney in favour of his brother Dilip Singh and also get the said General Power of Attorney attested and registered within the jail premises.
2. Learned counsel for the petitioner submits that since the petitioner has been arrested in a criminal case and he is facing trial in Sessions Case No.54/2020 before the Court of the Special



Judge, NDPS Cases, Jaipur, Metropolitan-I he is not in a position to execute the General Power of Attorney in favour of his brother Dilip Singh, unless the same is registered by the jurisdictional Sub-Registrar, Jaipur and attested by the Superintendent, Central Jail, Jaipur in the jail premises itself. Counsel submits that the financial condition of the family of the petitioner is critical, hence, certain part of a jointly owned property, as described in the aforesaid General Power of Attorney, is required to be sold. However, the Court below has declined to issue the direction, as sought for in the petitioner's application, on a hypothetical & imaginary ground that there is a possibility that the petitioner might have purchased the property mentioned in the General Power of Attorney from the proceeds of crime.

3. Counsel further submits that neither any evidence was collected by the Investigating Agency, at the time of submission of charge-sheet nor any such evidence has been led during the course of trial, to show that the said property has been purchased by the petitioner from the proceeds of crime. Hence, under these circumstances, the impugned order passed by the Court below is liable to be quashed and set-aside and the direction sought for, by the petitioner, may be issued.

4. *Per contra*, learned counsel appearing on behalf of the respondent opposed the prayer and submitted that the trial has reached its fag end and there are chances that the petitioner might have purchased the property, as mentioned in the General Power of Attorney, from the proceeds of the crime, therefore, the Court below has not committed any error in rejecting the application submitted by the petitioner. Counsel further submits





that under these circumstances, interference of this Court is not warranted and the instant petition is liable to be rejected.

5. Heard and considered the submissions made at the Bar and perused the material available on record.

6. Considering the argument put forward by learned counsel for the petitioner and perusing the record, it appears that the petitioner is the co-owner of the property, as mentioned in the General Power of Attorney and looking to the fact that the petitioner is a pre-convict prisoner, lodged in the Central Jail, Jaipur in connection with the Sessions Case No.54/2020, he is not in a position to execute the General Power of Attorney in favour of his brother Dilip Singh, with respect to jointly owned property, as mentioned in the General Power of Attorney and therefore, he is not in a position to sell the same to satisfy the needs of his family members, who are suffering from financial crisis.

7. No proof has been produced on the record by the respondents to show that the aforesaid property, as mentioned in the General Power of Attorney, has been purchased by the petitioner from the proceeds of crime. Unless and until such evidence is made available on record of the Trial Court, it cannot be presumed simply on the basis of one's imagination that the aforesaid property has been purchased by the petitioner from the proceeds of crime.

8. A person, against whom an FIR is lodged, has the fundamental right to take care of his property or alienate the same by way of sale, in case, necessity so arises. He cannot be deprived to do so simply because he is a suspect in a criminal case and is lodged in the jail. In case, the permission for execution of





General Power of Attorney is not granted to the petitioner, it would tantamount to violation of his fundamental right, as guaranteed under Article 21 of the Constitution of India.

9. It is settled principle of law that mere incarceration does not result in "civil death" of a person. Under Article 21 and Article 300A of the Constitution of India, an under trial or pre-convict prisoner continues to enjoy the fundamental right to hold, own, and dispose of property. The Hon'ble Supreme Court in the cases of **State of Maharashtra vs. Prabhakar Pandurang Nagarkar** reported in **AIR 1966 SC 424**; and **Sunil Batra vs. Delhi Administration** reported in **(1978) 4 SCC 494** has categorically held that a prisoner retains all civil rights which are not inconsistent with the fact of imprisonment. Thus, the capacity to contract and transfer the property under Sections 5 and 7 of the Transfer of Property Act, 1882 and Section 1A of the Powers of Attorney Act, 1882 remains intact.

10. Since a prisoner is unable to physically attend the office of the Sub-Registrar, the law provides a mechanism for execution of documents within prison premises. Under Section 38(1)(b) of the Registration Act, 1908 (for short, "the Act of 1908"), the Registering Authority may depute an Officer to the place of confinement, for registration of the document.

11. The Section 38 of the Act of 1908 is reproduced as under:-

"38. Persons exempt from appearance at registration-office.

(1)(a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office, or

(b) a person in jail under civil or criminal process, or





(c) person exempt by law from personal appearance in Court, and who would but for the provisions next hereinafter contained be required to appear in person at the registration-office, shall not be required so to appear.

(2) In the case of every such person the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination."



According to the aforesaid provision, a person who, by reason of bodily infirmity, is unable to appear at the registration-office without risk or serious inconvenience or a person confined in jail under civil or criminal process, shall not be required to appear, i.e., the appearance, referred in Section 36 & 37 of the Act of 1908 for the purposes of registration.

12. As per Rule 202 of the Rajasthan Prison Rules, 2022 (for short, "the Rules of 2022) and corresponding rules in other states, the Power of Attorney is executed by the prisoner before the Jail Superintendent/Magistrate, who attests the same after verifying identity through jail records, Aadhaar and witnesses. Rule 202 of the Rules of 2022 deals with the facilities for the under trial prisoner and Rule 526 of the Rules of 2022 deals with the provisions for convicted prisoners to sign power of attorney in jail. Both the provisions are reproduced hereunder for ready Reference:-

"202. Facilities for the under-trial prisoners.- The following facilities shall be extended to all under trial prisoners, namely:-

- (a) legal aid;
- (b) interviews with lawyers or family members (for legal purposes);
- (c) Signing Vakalatnama and bail bond;



- (d) delegation of power of attorney;
- (e) execution of will;
- (f) Essential religious necessities as per rules;
- (g) applications to courts for legal aid as per provisions of law;
- (h) other applications to courts; and
- (i) such other facilities as are sanctioned by the Government from time to time must be extended to the under-trial prisoners."

"526. Prisoners allowed to sign a power of attorney.- Every convicted prisoner may, at the discretion of the Superintendent, be permitted to sign and attest a power of attorney or other statements or conveyances concerning his or her properties and each such transaction shall be treated as an interview."

Hence, it is clear that even the Rules of 2022 also provide for execution of power of attorney by the under trials as well as convicted prisoners in jail.

13. Even the Allahabad High Court, Lucknow Bench, in the case of **Shyam Nayan Tiwari Vs. State of U.P. through Princ. Secy. Home Vidhan Sabha Marg Lko. & Ors.** while deciding **Criminal Misc. Writ Petition No.1959/2024** on 21.03.2024, has held that a Power of Attorney, so attested in jail, is valid and the Registrar cannot refuse registration solely on the ground that the executant is a prisoner. The relevant para of the judgment is reproduced as under:-

"As recorded in the above quoted judgment, Jail Manual, 2022 is in operation. In view of the aforesaid, we direct the Jail Superintendent, District Jail, Lucknow to facilitate execution of the sale deed by the petitioner if he is the owner of the land in question as per Para 654 of U.P. Jail Manual, 2022 and thereafter, the Superintendent of Jail, District Jail, Lucknow on behalf of the petitioner shall inform the Registrar/ Sub-Registrar for appropriate steps under Section 38 of the





Registration Act, 1908 for registration of the said sale deed whereupon the said officer i.e. Registrar/ Sub-Registrar would act in accordance with Section 38 of the Act, 1908 and shall visit the jail where the petitioner is lodged and take appropriate steps for registration of the said sale deed. Let the exercise of execution and signing of sale deed be completed within fifteen days of receipt of certified copy of this order if the occasion so arises and thereafter for the purposes of registration of said documents, the Sub-Registrar concerned having jurisdiction over the matter would visit the District Jail, Lucknow where the petitioner is lodged within the next fifteen days so that the sale deed is registered in terms of the aforesaid provision and as per Rules, unless there is any legal impediment in this regard, in which case, he shall inform the Jail Superintendent in writing who in turn shall inform the petitioner."



14. Similarly, in the case of **Soma Saha Sen Vs. State of West Bengal & Ors.** reported in **2017 SCC OnLine Cal 3747**, the Calcutta High Court has observed and held in Para Nos.9 to 12 as under:-

"9. In the instant case, the husband of the petitioner is seeking to transfer flats in a multistoried building which was under his management as a developer of the said property and, therefore, I am of the opinion that there is no embargo upon the petitioner's husband (who is an under-trial prisoner) to execute sale deeds for transfer of such flats to the intending purchasers on account of his incarceration if he is otherwise entitled to do so in law. It may also be apposite to refer to Section 79(2)(j) of the West Bengal Correctional Services Act, 1992, as argued by Ms. Sengupta, which, inter alia, provides that a prisoner is entitled to enjoy his fundamental rights enshrined in Chapter III of the Constitution of India until and unless the said rights cannot be enjoyed due to such incarceration. Right to carry on trade and profession including right to convey property in course of such business is an essential fundamental right enshrined under Article 19(i)(g) of the Constitution of India and the same do not



stand eclipsed by the continuing incarceration of a prisoner. Hence, I am of the opinion that incarceration of the husband of the petitioner shall not disentitle him from executing sale deeds to convey flats in favour of intending purchasers in accordance with law.

10. With regard to the registration of the said instruments it may be pertinent to note that the sale deeds must be presented by the person or his representative or assign in terms of Section 28 of the Registration Act, 1908 at the office of the appropriate registering authority. However, the registering officer may on special cause being shown attend the residence of any person desiring to present a document or to deposit a will for registration and accept such document or will for the purpose of registration. When a prisoner is incarcerated in a correctional home, it is to be deemed that the prisoner is temporarily residing in the said correctional home. In view of such fact the residence of the prisoner for the purpose of the proviso to the aforesaid Section shall be construed to be in the precincts of the correctional home. Hence, if the registering authority is approached on behalf of the prisoner for registering a document which he is otherwise entitled to execute, it shall ordinarily be the duty of the said authority to hold a commission inside the precincts of the correctional home for effecting presentation of the instrument for registration in terms of Section 32 of the said Act.

11. It may be pertinent to mention that the practice of holding of commission in the correctional home is not alien to the West Bengal Correctional Services Act, 1992. In fact, Section 78 of the said Act permits commission for examining prisoners as witnesses inside the correctional home when the prisoner cannot be brought to the Court for such purpose or is incarcerating in a jail outside the State of West Bengal.

12. In view of the aforesaid discussion, I direct that the prisoner, that is the husband of the petitioner, or his representative shall be at liberty to make application before the Director General,





Correctional Services, West Bengal namely, the respondent no. 3 herein for execution of the sale deeds in favour of the intending purchasers in terms of Paragraph 654D of the West Bengal Jail Code and also before the appropriate registering authority for presentation and/or acceptance of such instrument for registration by way of holding commission on a date which may be fixed by the said registering authority in consultation with the respondent no. 3 herein within the precincts of the correctional home where the prisoner is presently housed in terms of proviso to Section 31 of the Registration Act, 1908. In the event any application, as aforesaid, is made before the appropriate authorities they shall consider the same in the light of the directions given in this order and take necessary steps as promptly as possible but not later than 30 days from the date of making of such application and in accordance with law."

15. Once the Special or General Power of Attorney is duly attested in jail and subsequently registered, the constituted attorney acquires the legal authority to execute the sale deed on behalf of the prisoner-principal. The sale deed must expressly recite that it is being executed "for and on behalf of [Name of Prisoner] through his Power of Attorney Holder under Registered GPA dated...". The attorney can receive consideration, present the document for registration and complete all consequential acts. The transaction remains valid provided the Power of Attorney specifically authorizes the sale of the scheduled property and the attorney acts within the scope of authority conferred.

16. The right is, however, subject to statutory restrictions. If the property is "case property" or has been attached by a court under Section 102/83 CrPC, or by authorities under PMLA, NDPS or other special statutes, prior permission of the competent Court/Tribunal



is mandatory before transfer. Similarly, while an undertrial faces no bar, a convicted prisoner may be subject to additional restrictions under State prison manuals. To prevent fraud and coercion, Registrars often insist upon video recording of execution in jail and a medical certificate regarding soundness of mind of the prisoner.

17. In view of the above constitutional provisions, statutory framework and judicial pronouncements, the law is clear that a pre-convict/undertrial prisoner does not forfeit the right to alienate his property. He can validly execute a registered General or Special Power of Attorney from jail, through the Jail Superintendent and his attorney can thereafter, legally sell the property. The only requirement is strict adherence to procedural safeguards of attestation, registration and absence of any court attachment.

18. Considering the overall facts and circumstances of the case, the order impugned passed by the Court below deserves to be and is hereby quashed and set-aside. The instant misc. petition stands allowed. A direction is issued to the Superintendent, Central Jail, Jaipur to attest the General Power of Attorney signed by the petitioner in favour of his brother Dilip Singh forthwith and also get the same registered at the earliest, without any further delay.

19. Accordingly, the instant criminal misc. petition stands allowed. Stay application and all pending application(s), if any, also stand disposed of.

20. Consequences to follow.

21. Before parting with this order, it is made clear that before execution of any sale deed, the petitioner would submit an





application before the Trial Court, seeking permission to sell the same and the said application would be decided in accordance with law.

(ANOOP KUMAR DHAND),J

Aayush Sharma/88

