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IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 23RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 104928 OF 2026 (GM-RES)**BETWEEN:**

SHRI BASAVARAJ SHANKRAPPA AVVANNAVAR,
AGE: 44 YEARS,
R/O. CHIKKAMALLIGAWAD ROAD, KUSUGAL,
TQ: HUBBALLI, DIST: DHARWAD.

PRESENT ADDRESS.
UNDER TRIAL PRISONER,
AT CENTRAL PRISON,
DHARWAD-580008.

... PETITIONER

(BY SRI SANKET SHANKRAPPA AMBALI, ADVOCATE)

AND:

1. THE SUPERINTENDENT
CENTRAL PRISON,
DHARWAD-580008.

2. THE SENIOR SUB-REGISTRAR,
DHARWAD-580001.

... RESPONDENTS

(BY SRI SHARAD V. MAGADUM, AGA FOR R1 AND R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF MANDAMUS/OR OF APPROPRIATE NATURE/ ORDER(S) TO THE RESPONDENT NO. 1 TO PERMIT THE RESPONDENT NO. 2 OR ANY OFFICER AUTHORISED BY HIM ON HIS BEHALF TO COMPLETE THE PROCESS OF REGISTRATION OF A SALE DEED BY THE PETITIONER IN RESPECT OF SY. NO. 29 BLOCK HISSA NO. 5 SITUATED AT KAMALAPUR VILLAGE OF TQ. AND DT. DHARWAD MEASURING 22 GUNTAS.





THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

ORAL ORDER

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

The petitioner, who is presently in judicial custody as an under-trial prisoner and lodged in the Central Prison, Dharwad, has presented the instant writ petition seeking a writ of mandamus directing respondent No.1- Superintendent of the Central Prison to permit the jurisdictional Sub-Registrar to visit the prison premises for the purpose of completing the registration of a sale deed by obtaining the petitioner's signatures and complying with the statutory formalities contemplated under the Registration Act, 1908 (for short "the Act").

2. The grievance of the petitioner is that his incarceration pending criminal trial has rendered him incapable of personally appearing before the office of the Sub-Registrar, thereby impeding his lawful right to deal with and alienate his immovable property, notwithstanding



the statutory mechanism enabling registration of documents executed by persons confined in jail.

3. This Court had adjourned the matter to enable the learned Additional Government Advocate to obtain necessary instructions from the respondent authorities. Pursuant thereto, the learned Additional Government Advocate, on instructions, submits that though the jurisdictional Sub-Registrar had addressed a communication requesting the Superintendent of the Central Prison to facilitate registration of the proposed sale deed by visiting the prison, the said communication was never placed before the competent prison authority. It is therefore contended that respondent No.1 had no occasion to consider or act upon the request made by the Sub-Registrar. It is submitted that the failure to facilitate the registration process was not deliberate but was on account of non-receipt of the communication addressed by the Registering Authority.



4. Having heard the learned counsel appearing for the petitioner and the learned Additional Government Advocate appearing for the respondents, this Court posed a pointed query as to whether the provisions of the Act, contemplate a situation where a person who is unable to appear before the registering authority on account of incarceration can nevertheless execute and register a document relating to his immovable property. The learned counsel for the petitioner invited the attention of this Court to Section 38 of the Act and submitted that the statute itself carves out an exception to the general rule requiring personal appearance before the Registering Officer. It is argued that the petitioner's incarceration as an under-trial prisoner does not deprive him of his proprietary rights and, therefore, the statutory mechanism provided under Section 38 of the Act squarely governs the present case.



5. This Court, having examined Section 38 of the Act, deems it appropriate to extract the same, which reads 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."

(emphasis supplied by me)



6. A plain and meaningful reading of Section 38 leaves no manner of doubt that the Legislature has consciously recognized the practical difficulties faced by certain classes of persons in personally appearing before the registration office. The provision expressly includes within its ambit a person confined in jail under either civil or criminal process. The legislative mandate is couched in mandatory language. Once it is shown that the executant is confined in prison, the Registering Officer is not expected to insist upon his personal appearance at the registration office. Instead, the statute obligates the Registering Officer either to personally visit the prison where such person is confined for the purpose of examining him and completing the registration formalities or to issue a commission for such examination. The statutory intent is thus to ensure that a person's legal incapacity to physically appear before the registration office does not result in deprivation of his lawful right to deal with his property.



7. It is equally well settled that an accused person who is in judicial custody as an under-trial prisoner does not suffer a civil death merely because he is facing criminal prosecution. His incarceration pending trial does not divest him of his ownership over his movable or immovable properties nor does it extinguish his civil rights except to the extent that restrictions are necessarily imposed by law for maintaining prison discipline, security and orderly administration. An under-trial continues to remain clothed with all proprietary rights available to an ordinary citizen, including the right to alienate, transfer or otherwise deal with his property in accordance with law. Such civil rights cannot be rendered illusory merely because the person is unable to personally appear before the Registering Authority on account of his confinement. It is precisely to safeguard these rights that Section 38 of the Act has been enacted.

8. In the present case, the petitioner seeks only to avail the statutory procedure expressly contemplated



under Section 38 of the Act. The request neither seeks any extraordinary indulgence nor requires this Court to carve out a new procedure. What is sought is only enforcement of an existing statutory obligation. Once the jurisdictional Sub-Registrar has expressed his willingness to visit the prison for completion of the registration process, the prison authorities are equally duty-bound to extend necessary cooperation by facilitating access to the petitioner, subject of course to compliance with the prison rules and such security measures as may be considered necessary. Administrative inconvenience cannot be put forth as a ground to defeat a statutory right expressly recognized by Parliament.

9. This Court is therefore satisfied that the petitioner, though presently an under-trial prisoner, possesses a legal and enforceable right to execute and register a conveyance relating to his property by resorting to the procedure prescribed under Section 38 of the Act. Correspondingly, the Registering Officer is under a



statutory obligation to undertake the exercise contemplated under the said provision, while the prison authorities are under a public duty to facilitate such exercise by permitting the Registering Officer to enter the prison premises and complete the necessary formalities in accordance with law. Since the respondents have not disputed the petitioner's entitlement under Section 38 and the only impediment appears to have been non-communication of the request addressed by the Sub-Registrar, this Court finds that the petitioner is entitled to the relief sought.

10. In view of the foregoing discussion, this Court proceeds to pass the following:

ORDER

- (i) The writ petition is ***allowed***;
- (ii) Respondent No.1 – Superintendent, Central Prison, Dharwad, is directed to permit respondent No.2 – the jurisdictional Sub-



Registrar, to visit the prison premises and complete the registration process by obtaining the petitioner's signatures and undertaking such examination as is contemplated under Section 38(1)(b) read with Section 38(2) of the Registration Act, 1908, subject to compliance with the applicable prison regulations and security protocols;

(iii) Respondent No.2 shall complete the aforesaid exercise expeditiously and, in any event, within a period of four (4) weeks from the date of receipt of a certified copy of this order.

**Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE**

CA
CT:GSM
List No.: 1 Sl No.: 31