

ORDER BELOW EXH. 164 IN SESSIONS CASE NO. 190/2024
(Passed on : 12.02.2026)

(CNR No. MHPU14-003322-2024)

1. This is an application by the accused no.1 Gautam Kakade for seeking a direction to the Jail Authorities to produce him before the Sub-Registrar, Haveli, Pune for the purpose of execution and authentication of a Power of Attorney in respect of the property described in the application.
2. Perused the application and reply thereon. Heard Ld. Counsel for both the sides.
3. Ld. Counsel for accused no.1 viz. Gautam submitted that accused no.1 Gautam is the only earning member of his family. However, as he is in jail, his family members are unable to meet their financial needs. Therefore, accused no.1 intends to alienate his property bearing Gat No.1653/1, admeasuring area 0.30 HR, situated at Rashin, Tal. Karjat, Dist. Ahilyanagar. As such, accused no.1 Gautam wants to execute registered Power of Attorney in favour of his mother viz. Sulbha Kakade so as to facilitate alienation of his above-said property. Accordingly, it is prayed to issue direction to the concerned Jail Authority to produce the accused no.1 Gautam Kakade before Sub Registrar, Haveli No.3, Mega City Center, Hadapsar, Pune with jail/police escort for the purpose of executing his said Power of Attorney.
4. Application is resisted by Ld. Special Public Prosecutor on the ground that offence against the accused is of serious in

nature and there is possibility of tampering with the evidence of prosecution, if accused is permitted to come out of jail, even for a temporary period. Moreover, there is no special need to alienate the property as prayed. Hence, it is prayed to reject the application.

5. It is undisputed that accused no.1 Gautam Kakade is in judicial custody and he does not lose his civil right to deal with his property merely because he is in jail. However, the question that arises is whether he is required to be physically produced before the Sub-Registrar for execution of a Power of Attorney.

6. Section 33 of the Registration Act, 1908 provides for recognition of powers-of-attorney for the purposes of Section 32. The proviso to Section 33(1) of the said Act specifically stipulates that persons who are in jail under civil or criminal process shall not be required to attend at any registration office or Court for the purpose of executing such power-of-attorney. Similarly, Section 38(1)(b) of the said Act expressly exempts a person in jail under civil or criminal process from personal appearance at the registration office. Moreover, Section 38(2) of the said Act mandates that in case proposed executant of power of attorney is in jail, the registering officer shall either himself go to the jail in which the person is confined and examine him, or issue a commission for his examination.

7. In view of aforesaid legal position, it is clear that provisions of S.33 and 38 of the Registration Act,1908

contemplates that a person in custody need not be removed from jail for execution of a power-of-attorney. The said Act provides an alternative mechanism ensuring authentication and voluntariness while preserving security and administrative discipline. Therefore, it is not necessary to direct the jail authority to produce the accused no.1 Gautam before the Sub-Registrar for executing his power of attorney. In view of aforesaid statutory provisions and in the absence of special reasons, it will not be just and proper to issue direction for production of the accused no.1 Gautam before the Sub-Registrar, Pune for registration of power of attorney. Hence, application is liable to be rejected. Hence, I pass the following order :

ORDER

1. Application at Exh.164 is hereby rejected.
2. It is clarified that the accused no.1 Gautam Kakade is at liberty to take recourse to the procedure contemplated under Sections 33 and 38 of the Registration Act, 1908 for executing power of attorney, and it shall be open to the competent registering authority to visit the jail or issue commission in accordance with law.

Baramati
Date : 12.02.2026

(Hitendra Urmila Anilkumar Wani)
Additional Sessions Judge
Baramati.