

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<u>UKHC010125982026</u> <u>WPCRL/1383/2026</u> Usman Ali Khan --Petitioner Versus State Of Uttarakhand --Respondent <u>Hon'ble Alok Mahra, J.</u> Mr. B.M. Pingal, Advocate for the petitioner. 2. Mr. V.S. Pal, A.G.A. for the State. 3. The present writ petition has been filed by the petitioner seeking the following reliefs:- “(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 10.07.2026 passed by learned Special Judge (POCSO), Haldwani Nainital in S.S.T. Case No. 41 of 2025, State of Uttarakhand Vs. Usman Ali Khan and Others. (ii) Issue a writ, order or direction in the nature of Mandamus directing the Competent Authority to permit the petitioner to execute registered gift deed in respect to the self acquired property in favour of his son namely Mohammad Kasim Khan in respect to the property bearing Khata No. 31 admeasuring 1 naali and Khata No. 24 admeasuring 8 mutthi total area admeasuring 1 naali and 8 mutthi situated at Shyamkhet (Bhowali), District Nainital.” 4. Petitioner is in judicial custody. He has moved an application that he may be permitted to register a gift deed in favour of

		his son in respect of an immovable property situated in Shyamkhet (Bhowali), District Nainital bearing Khata No. 31 admeasuring 1 naali and Khata No. 24 admeasuring 8 mutthi total area admeasuring 1 naali and 8 mutthi. Learned Special Judge (POCSO), Haldwani, Nainital vide impugned order dated 10.07.2026 passed in S.S.T. Case No. 41 of 2025, dismissed the application of the petitioner on the ground that the petitioner has not shown any emergency as to why the gift deed is to be executed when he is in judicial custody and the trial is underway. 5. Learned counsel for the petitioner submits that the ground for rejecting the application cannot be sustained in light of Section 38 of the Registration Act, 1908 (for short 'the Act'). Section 38 of the Act is extracted as hereunder:- “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 provision next hereinafter contained be required to appear in person at the registration office, shall not be required so to appear. (2) In 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.” 6. On this basis, learned counsel for the petitioner submits that the Act provides that in case a person is in judicial custody, then the Registering Officer shall either visit to the Jail in which such person is confined for the purpose of examining him and completing the
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			registration formalities or to issue a commission for such examination and to get the instrument executed. Thus, learned counsel for the petitioner submits that Sub-Registrar, Registration Office, Nainital be directed to get the instrument (gift deed) executed by the petitioner, who is presently in judicial custody in Sub-Jail, Haldwani. It is further submitted that the trial, under which, the petitioner is in judicial custody is expeditiously being heard and the next date fixed in the trial case is 24.07.2026, therefore, Sub-Registrar concerned be directed to get the instrument executed on 23.07.2026. 7. Heard learned counsel for the parties and perused the record. 8. 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. 9. In the present case, the petitioner seeks
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			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. 10. Accordingly, the present writ petition is allowed. Consequently, the order dated 10.07.2026 passed by learned Special Judge (POCSO), Haldwani Nainital in S.S.T. Case No. 41 of 2025, State of Uttarakhand Vs. Usman Ali Khan and Others is hereby quashed. 11. As such, Sub-Registrar, Registration Office, Nainital is hereby directed to visit Sub-Jail, Haldwani on 23.07.2026 and get the instrument executed from the petitioner as per Section 38 of the Act. 12. Jailor, Sub-Jail, Haldwani is also directed to facilitate the entry of Registering Officer or any other person authorised by the Registering Officer to get the instrument registered. (Alok Mahra J.) 22.07.2026 Ujjwal
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