

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Application No. 791 of 2025

Sohail Yusuf Memon	...	Applicant
V/s.		
State of Maharashtra	...	Respondent.

None for the Applicant.	
Mrs. S.E. Phad	APP for the State.

CORAM : S.M. MODAK, J

DATE : 28th July 2025.

P.C. :

Heard learned APP in the morning session. No one was present on behalf of the Applicant. In the afternoon session also no one is present. He is an undertrial prisoner in Special Case No. 1140/2021. It is pending before Special Court as per the NDPS Act. He makes a simple request to concerned Judge. It is for grant of permission to execute registered Memorandum of Understanding and General Power of Attorney. Learned Judge refused the permission vide order dated 21st April 2025. The only issue in this petition is whether permission can be granted or not?

Considering the limited issue even though no one is present on behalf of the Petitioner, I am deciding the Petition.

2. Certain facts are mentioned in the impugned order. The undertrial prisoner is a borrower from Vasai Vikas Sahakari Bank Ltd. Waliv Branch. He has mortgaged his house. As he was behind bar, his family members are unable to repay the loan. There is a notice issued by the secured creditor i.e. concerned Bank dated 23rd February 2024 as per the provisions of Securitisation Act (Page-19). The Applicant is desirous of selling the said property and appropriate amount towards repayment of loan. Certain documentation is required, that is why he sought permission from the trial Court to execute the Memorandum of Understanding and General Power of Attorney.

3. Learned Judge while refusing the permission has referred about the allegations against the Applicant. He was found to be in possession of commercial quantity. There is an offence under Section 8(c) r/w 24 and 29 of NDPS Act. Further more, there is an offence under the provisions of MCOC Act. One can understand if offence registered against him are referred but this Court fail to understand how rejection of bail application is relevant for deciding the limited issue.

4. Learned Judge rejected the prayer for reason there is no provision in law so that the Applicant can go out of jail (wrongly typed as bar) and to provide police protection. Learned Judge has not considered the fact that the Applicant is an under-trial prisoner and he is in judicial custody just because he is an accused person, he is not

debarred from dealing with this property. He is not debarred from executing any documents pertaining to property. Only exception will be if that property is attached in investigation of an offence, it is not the case. The prayer clause in the petition does not mention grant of permission to come out of jail for execution of documents. It only says about grant of permission to execute the document through jail. It mean to say that the Applicant will remain in jail and the necessary formalities can be done at the jail itself.

4. So I am inclined to allow the Petition. If such permission is not granted, the right to deal with the property will be curtailed. The necessary directions can be given by the learned trial Court Judge only. Hence, the order:

ORDER

- (i) The Writ Petition is partly allowed.
- (ii) The order dated 21st April 2025 passed by the Special Court, NDPS in Special Case No.1140/2021 is set aside.
- (iii) The prayer for executing memorandum of understanding through jail is allowed.
- (iv) The further directions that the documents will be executed and who are the necessary persons who can attend the jail may be given by the trial Court

after hearing the Petitioner and the Prosecutor in-charge.

5. The Writ Petition stands disposed of.

(S.M. MODAK, J.)