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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.60 OF 2023

The State of Maharashtra

APPLICANT

VERSUS

Jafarkhan Hasnoddin Pathan

RESPONDENT

.....
Mr. B. B. Bhise, APP for the applicant - State

Mr. J. M. Murkute, Advocate for respondent
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th JULY, 2024

ORDER :

1. By this appeal, filed under section 378 of the Criminal Procedure Code, the State seeks leave to file appeal challenging judgment and order of acquittal passed by learned Special Judge (PC Act), Aurangabad in Special Case (ACB) No. 19 of 2013, thereby acquitting the accused from offence punishable under section 7, 13 (1) (d) and 13 (2) of the Prevention of Corruption Act.

2. Heard learned APP for the State and learned advocate for respondent - accused. Perused the documents placed on record, grounds raised in the appeal memo and the impugned judgment and order of acquittal.

3. Learned APP has strenuously assailed the impugned judgment and order of acquittal contending that in spite of there being consistent evidence of the complainant and Pancha witnesses, Trial Court has erred in acquitting the accused. He submits that there is sufficient evidence on record to convict the accused. Hence, leave needs to be granted in this matter to file appeal against acquittal.

4. Learned advocate for respondent – accused, on the other hand supported the impugned judgment and order of acquittal.

5. Perusal of documents placed on record indicates that there is no valid sanction for prosecuting the accused, who was, at the relevant time, working as Assistant Sub Inspector of Police at CIDCO Police Station, Aurangabad.

6. Prosecution has examined four witnesses in support of the charge. However, there are contradictions in the evidence of prosecution witnesses. Investigating Officer / Dy.S.P. ACB has given vital admissions in favour of defence. He has denied that voice recorder used at the time of actual trap is seized, unsealed Panchanama was prepared. There are lapses on the part of the Investigating Officer in respect of Muddemal receipts and correspondence. Investigating Officer has not mentioned number of memory card while preparing spot panchanama (Exhibit-57).

He has not seized memory card and has not taken hash value of the memory card. He has not seized the voice recorder. Trial Court, therefore, has rightly held that it is very unsafe to rely upon these panchanamas and it shows how casual and carelessly investigation is made in such a serious crime.

7. The view taken by the Trial Court is a possible view and requires no interference. Leave refused. Application is rejected.

**[NITIN B. SURYAWANSHI]
JUDGE**