



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 32 OF 2023

The State of Maharashtra,
Through Dy. Superintendent of Police,
Anti Corruption Bureau, Beed,
Tq. & Dist. Beed.

... Applicant
(Orig. Prosecution)

Versus

Ganesh Dashrath Kadam,
Age : 54 years, Occu. : Service,
R/o. Amalner, Now at Beed,
Tq. & Dist. Beed.

... Respondent
(Orig. Accused)

.....
Mr. S. A. Gaikwad, APP for Applicant – State.
Mr. G. K. Naik Thigle, Advocate for Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 17 DECEMBER 2025

PRONOUNCED ON : 22 DECEMBER 2025

ORDER :

1. This leave to file appeal is at the instance of State as it is desirous of challenging the judgment and order of acquittal passed by learned Additional Sessions Judge/Special ACB Court, Beed in Special (ACB) Case No.01 of 2014, thereby acquitting present respondent from charge under sections 7, 13(1) read with section 13(2) of the Prevention of Corruption Act.

2. PW1 complainant lodged complaint with ACB that, for

releasing complainant's brother on bail, the accused, who was a police constable, had demanded Rs.12,000/- and on negotiations, it was brought down to Rs.6,000/- and on failure to meet the said demand, police custody of remand of the accused would be applied for. On receipt of said complaint, ACB authorities planned and executed trap and after apprehending accused, he was tried for above charges, but vide above judgment and order, came to be acquitted. Therefore, to question the same by way of appeal, State has pressed into service instant application seeking leave to file appeal.

3. Learned APP pointed out that, on receipt of complaint, ACB authorities had planned trap. That, verification of demand was got done by recording the conversation and on getting confirmed, further trap was planned by engaging independent panch witness. He pointed out that, both, complainant and panch witness, were given necessary instruction. They both had consistently deposed about demand being made. That, learned trial court failed to consider and appreciate the same, and merely on account of failure of complainant to state that amount demanded was of bribe, benefit of doubt has been extended to the accused. Learned APP pointed out that, in fact, evidence of shadow panch was clear and in consonance with the story of the prosecution. Evidence of complainant as well as shadow panch, had remained unshaken in cross. According to

learned APP, with such quality of evidence, guilt of accused ought to have been recorded, but trial court failed to do the same.

4. As regards to acceptance is concerned, learned APP pointed out that, both witnesses have stated about accused taking the bribe amount in his hand, counting it, and therefore, the only inference that can be drawn is that there was acceptance also. Therefore, according to learned APP, the further conversation on behalf of accused regarding payments made, were to be given to the advocate, ought not to have been accepted by trial court. According to him, reasoning to that extent by trial court is also incorrect. That, there are traces of anthracene powder to the hands of accused confirming acceptance. He further pointed out that, here, there was valid sanction, and therefore, when same has not been appreciated, it is his submission that, prosecution has a good case in merits in appeal, and so he urges for grant of leave.

5. Per contra, learned counsel for respondent accused supported the judgment of acquittal by pointing out that, at the first count, prosecution has failed to substantiate that there was any work with accused. According to him, offence registered against arrested person, who is relative of PW1 complainant, was cognizable one and as such, police had no authority to grant bail or to help in any manner. He further pointed out that, complainant in his evidence has not stated about bribe

demand by accused. On the contrary, it has come in the evidence of complainant, of which there is admission that the amount was meant to be passed on advocate for securing bail. Thus, according to him, prosecution had failed to establish very demand and according to him, here, essential like demand not being proved, case of prosecution had collapsed. He also pointed out that, there is also non application of mind while according sanction. He pointed out that, here, consistently name of one Vishnu Misal is coming on record in the testimony of complainant as well as panch witness, but Investigating Officer has neither recorded statement of said person, nor prosecution examined him. According to him, trial court has meticulously examined and appreciated the testimonies and by applying settled law, refused to accept the case of prosecution and granted benefit of doubt and so he urges to apply the principles while dealing with acquittal and refused leave.

6. After hearing above submissions and on going through the papers, here, it is emerging that, brother of PW1 Sachin, namely Bapu Misal was arrested by Amalner Police. It is the case of prosecution that, for helping in securing the release of bail of arrested accused, there was demand of Rs.12,000/- and complaint to that extent was received by ACB, which then took further steps in planning and executing trap.

7. Evidence of complainant PW1 and shadow panch PW2 is

crucial in matters of such nature, and therefore, the same is visited. In evidence of PW1 complainant at Exh.23, he has deposed that, on account of quarrel between Bhausahab Misal and his brother Bapu Misal, complaint was lodged at Amalner police station on 20.08.2013, further resulting into arrest of Bapu Misal. This witness stated that, for production of Bapu Misal, accused constable was on duty and he is deposed that, while he was in the company of Vishnu Misal, accused demanded Rs.12,000/- from Vishnu Misal, and therefore, he and Vishnu Misal had been to ACB and lodged complaint Exh.24. He further deposed that, trap was laid and he and one official of irrigation department, visited police station and approached accused. That time, he claims that accused demanded Rs.12,000/-, and therefore, he and Vishnu as well as official of irrigation department, came out of the police station and thereafter, they all came to Pimpalwandi, where there they took tea and he does not remember anything beyond it. He stated that, tainted currency of Rs.6,000/- were handed over to accused, and at that time, ACB officer had apprehended accused.

In cross, in paragraph 5, he has admitted that, when he handed over cash to accused, he told the accused that, after production of accused Bapu Misal, to get his bail done by engaging advocate and saying so accused counted the cash and at that point of time, Investigating Officer apprehended accused.

8. Therefore, here, doubt creeps in from above evidence as to whether the amount handed over was towards bribe or not. Because in examination-in-chief itself, PW1 complainant has deposed that demand was made by accused with Vishnu Misal and as pointed out, this witness is not examined.

9. PW2 is the shadow panch and his evidence is at Exh.33 and according to him, while he was in the company of complainant, at that time, there was conversation between accused and complainant and accused had demanded Rs.12,000/- and finally on negotiations, amount was brought down to Rs.6,000/-. However, this witness does not state or refer about Vishnu Misal to be present with complainant and demand of money being raised to him, as is stated by PW1. In paragraph 7 of the examination-in-chief, he stated that, while taking tea accused had questioned complainant whether he brought money and when money was taken out, it was accepted by accused and also counted it and at that point of time itself, Investigating Officer apprehended accused. Testimony of PW2 shadow panch seems to be in consonance with prosecution story. However, here, as stated above, the very aspect of demand has come under shadow of doubt as complainant himself has not either supported prosecution or has by agreeing that after the amount was handed to the accused, he has stated that, the amount be given to advocate for securing

bail. Evidence of PW1 complainant has given severe dent to the prosecution case about demand. Further, evidence of PW1 complainant suggests demand being not made to him, but to Vishnu Misal, who was said to be in his company. Surprisingly, the said person, whom the witness admitted to be present throughout, is not examined by the prosecution.

10. It is settled position that, if demand itself is not proved beyond reasonable doubt, further exercise of acceptance also goes in vain as the aspect of demand of bribe itself is not proved.

11. With such quality of evidence, though there is evidence of PW2 shadow panch and though there is valid sanction, in the light of above quality of evidence of complainant himself and the aspect of demand coming under shadow of doubt, no purpose would be served by according leave. Hence, the following order is passed :

ORDER

- (i) The leave is refused.
- (ii) The application is rejected.

(ABHAY S. WAGHWASE, J.)