



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.38 OF 2025

The State of Maharashtra,  
Through Police Station,  
Mukundwadi, Dist. Aurangabad.

... Applicant

Versus

Shivaji Motiram Dhumal,  
Age : 74 years, Occu. : Service,  
R/o. Plot No. 40, Mhasoba Galli,  
Jadhavwadi, Dist. Aurangabad.

... Respondent

.....  
Mr. P. P. Dawalkar, APP for Applicant/State  
Mr. J. M. Murkute, Advocate for Respondent  
.....

**CORAM : ABHAY S. WAGHWASE, J.**

**RESERVED ON : 18<sup>th</sup> NOVEMBER 2025**

**PRONOUNCED ON : 20<sup>th</sup> NOVEMBER 2025**

**ORDER :**

1. Instant leave to file appeal is on behalf of prosecution as State intends to question the judgment and order dated 05.07.2024 passed by learned Special Judge, Aurangabad in Special ACB Case No. 27 of 2015, by which present respondent was acquitted from charges under Section 7 and 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act.

**FACTS LEADING TO TRIAL IN BRIEF ARE AS UNDER**

2. Brother of PW 1 complainant herein was involved in a road

traffic accident dated 12.02.2015. Both brothers had been to police station and according to prosecution, for releasing brother of complainant on bail as well as for releasing vehicle, demand of Rs.20,000/- was made by respondent, who worked as Police Constable. On negotiations, the amount was brought down to Rs.7,000/-, but PW1 approached ACB and lodged report, resulting into planning and laying trap and charge-sheeting accused.

Prosecution adduced evidence of in all four witnesses i.e. complainant (PW1), shadow panch (PW2), Investigating Officer (PW3) and Sanctioning Authority (PW4). Their substantive evidence was appreciated and after hearing prosecution as well as defence, by judgment and order dated 05.07.2024, respondent stood acquitted. Hence, to seek permission to file appeal, prosecution has pressed into service instant application.

3. Learned APP would point out that, here, accused who was police constable posted at Mukundwadi police station, had demanded bribe for releasing brother of complainant PW1 and also for releasing the vehicle seized in crime in a road traffic accident. He pointed out that, PW1 to whom there was demand, has adduced his evidence at Exh.13. His testimony finds support from PW2 shadow panch, who is examined at Exh.72. According to learned APP, trap was laid after due verification of

demand. Demand was recorded in voice recorder and panchnamas to that extent were drawn. Therefore, according to learned APP, there was convincing evidence before the court on the point of very demand. However, according to him, the said evidence has not been correctly appreciated.

4. Learned APP also took exception to the order of trial court on the ground that when there was material corroboration as regards to actual demand is concerned, the same ought not to have disbelieved the prosecution. He also questioned findings of the trial court on the point of sanction and would submit that, on many counts, prosecution has a very good case in appeal and hence, he urges for leave to file appeal.

5. In answer to above, learned counsel for respondent accused would point out that prosecution has miserably failed to establish the charges. According to him, there was no motive or work with accused as brother of accused was not released for want of surety and secondly, there was no order of court of law for releasing the vehicle and there being admission to this extent in the cross of complainant as well as Investigating Officer, it is submitted that no fault can be found in the conclusion by learned trial Judge. He pointed out that PW1 and PW2 are inconsistent on material counts. That, very demand has not been proved and for above reasons, he urges to refuse leave to file appeal.

6. Present application is for leave to file appeal. Only if prosecution succeeds in pointing out that they have good case in appeal, said leave can be granted. As pointed out that there are testimonies of PW1 complainant, PW2 shadow panch, PW3 Investigating Officer and PW4 Sanctioning Authority. As usual evidence of PW1 and PW2 is of much significance. In order to bring home the charge under Section 7 of P.C. Act, it is incumbent upon prosecution to prove that in capacity of public servant, accused respondent herein had demanded gratification other than legal remuneration for performing official function or showing favour. Case put-forth in trial court is that there is false implication out of annoyance and there was no official work at least with accused as both alleged works were beyond control means and powers of accused.

7. Here, it seems that because of the accident, brother of complainant namely, Ashok was taken in custody and for releasing him on bail, there was said to be demand. However, it seems to have on record that said brother of complainant could not be set at liberty from custody for his inability to furnish surety. Therefore, obviously there was no reason for PW1 to demand bribe.

8. Secondly, as pointed out, for releasing vehicle involved in the accident of which crime is registered, there has to be order of court, but the same was also not available in this case and, therefore, as

submitted that, there was no official work with respondent accused to motivate him to seek illegal gratification.

9. There is also serious doubt as to when alleged demand was made because according to PW1 after his visit to police station on 21.02.2015 he directly went to ACB Office and filed complaint Exh.13. However, said complaint is of 22.02.2015 and not of 21.02.2015. Therefore, the very aspect of demand of accused comes under shadow of doubt.

10. Much emphasis is laid by learned APP on the aspect of availability of verification of demand of bribe. However, as pointed out, whatever they deposed is not found in the verification panchanama Exh.81. Even in the transcript of voice recording panchanama Exh.100, there is no mention about demand. Investigating Officer has admitted in his cross to that extent.

11. It is also pointed by learned counsel for respondent that PW2 and PW3 are not consistent about number of memory cards wherein alleged conservation of verification demand stored. Even memory cards are not found to be kept in sealed condition to rule out the possibility of it being tampering.

12. Therefore, as regards to very demand is concerned, there are serious doubts. Prosecution has failed to prove demand being raised on the day of actual trap. Even as regards to validity of sanction is concerned, it comes under shadow of doubt as it is emerging from the cross of sanctioning authority that he did not seek documents pertaining to the bail of brother of complainant which was in fact the basis for raising demand of illegal gratification. Further PW4 has admitted that in the conversation supplied to him, there was no mention that accused had demanded Rs.7,000/- for releasing the motorcycle or for releasing the brother of complainant. Such evidence also contributes to the witness of the prosecution. Therefore, on several counts as case of prosecution is demonstrated to be weak, no fruitful purpose would be served by granting leave.

13. With such quality of evidence, no fault can be found on the part of learned trial court in disbelieving prosecution case and no point is made on merits before this court to accord leave. Hence, the following order :

**ORDER**

- (i) Leave is refused.
- (ii) The application for leave to appeal by State is rejected.

**(ABHAY S. WAGHWASE, J.)**