



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 129 OF 2025

The State of Maharashtra,
Through Police Inspector,
Police Station, Kranti Chowk,
Aurangabad, Dist. Aurangabad.

... Applicant

Versus

1. Shaikh Samir Ahemad Shaikh Iftekhar,
Age: 35 years, Occu: Service,
R/o. House No.1/12/262, Juna Bazar,
Hastikhana Beed, Tq. & Dist. Beed.

2. Narhari Daulatrao Pawar,
Age: 50 years, Occu. Service,
R/o. House No. 70, Teli Galli,
Ashti, Tq. Ashti, Dist. Beed.

... Respondents
(Orig. Accused)

.....
Mr. S. A. Gaikwad, APP for the Applicant-State.
Mr. N. S. Ghanekar, Advocate for the Respondents.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 09.12.2025

Pronounced on : 11.12.2025

ORDER :

1. This leave to file appeal is at the instant of the State, who is keen in questioning judgment and order dated 10.03.2025 passed in Speical Case (ACB) No. 100024 of 2013 acquitting both accused-respondents from charge under Sections 7, 12, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 [for short, "PC Act"].

2. Learned APP pointed out that, daughter of complainant had appeared for HSC examinations in February-March 2011. That Higher Secondary Certificate [HSC] Board had summoned the daughter of complainant on account of some inquiry with regard to her answer sheet, stitching of which had come off. For submitting positive report, learned APP pointed out that, accused no.1, who was Member of the Board, had demanded Rs.4,000/- from complainant and directed him to pay the said amount to accused no.2 and therefore, on receipt of complaint to the above extent, ACB authorities had planned and executed trap.

3. Learned APP pointed out that, there was demand verification got done and on getting confirmed, main trap was planned and it was also successful. However, according to learned APP, in spite of there being overwhelming evidence in the form of testimonies of complainant and shadow pancha, accused are surprisingly acquitted. According to him, there is improper appreciation. He pointed out that both, demand as well as acceptance, were cogently proved. That, there were anthracene traces to the hands of accused. That, accused no.2 had accepted bribe on behalf of accused no.1. Still learned trial court disbelieved the prosecution case. According to him, there is

good case on merits in appeal and as State is hopeful in succeeding in the appeal, he urges for leave to file appeal.

4. Learned counsel for the respondents would point out that, prosecution miserably failed to bring home the charges. He pointed out that, here, demand was said to be on telephonic conversation, but said conversation is neither recorded nor is before the court and therefore, according to him, when demand itself is not proved, case of prosecution itself has come under shadow of doubt.

5. He further submitted that, very Investigating Officer [IO] has admitted that, in spite of availability of voice recorder in the office, mobile of complainant was put to use but the same did not have speaker or recording facility itself and even IO has admitted to that extent. He further submitted that, not only IO, but even panchas have clearly admitted to that extent. He further pointed out that, that apart, there are major contradictions in the testimony of prosecution witnesses. He pointed out that, material witness like daughter of complainant, who was party to the alleged demand, has not been examined for the best reasons known to the prosecution.

6. As regards to acceptance is concerned, he pointed out that PW2 and PW3, i.e. complainant and shadow pancha, had allegedly been to

room no. 5 to meet accused, but alleged conversation between accused no.1 and PW2 is itself not available on record. That moreover, here, case is of thrusting, and trial court has accepted such version. He further pointed out that, both PW2 and PW3 were made to go through the panchanama before stepping into the witness box, which is not permissible. Therefore, according to him, when the cross-examination of prosecution witnesses has rendered very case of prosecution doubtful, learned trial court was perfectly justified in acquitting the accused and he prays to refuse leave.

7. Perused the record and papers. It seems that, accused are Member and staff of the HSC Board. Complaint was lodged that, for issuing positive report with regard to lose answer sheet of daughter of complainant, at the time of evaluation, demand of Rs.4,000/- was made, more particularly by accused no.1, and therefore complaint was lodged. It is further story of prosecution that at the time of actual trap, money was demanded by accused no.1 and complainant was directed to hand over the currency to accused no.2. With such allegations, trial was conducted.

8. As pointed out, and on going through the evidence, it is emerging that, it was specific case of prosecution that demand was

sought to be got verified by making call to the accused and therefore, complainant was made to call accused no.1 from his mobile in presence of pancha and IO, and they all heard the telephonic conversation between accused no.1 and complainant while mobile of complainant was on speaker mode. However, both witnesses, i.e. PW2 complainant and PW3 shadow pancha, in their cross admit that there was no speaker facility to the said mobile. Therefore, very initial demand itself has come under shadow of doubt. PW2 has given clear admission to that extent. Secondly, it is also emerging that, shadow pancha had no occasion to hear the conversation between complainant and accused.

9. As regards to acceptance is concerned, also prosecution case seems to have come under shadow of doubt, more particularly in the light of observations of trial court in para 32, that after visiting room no.5, they were outside only and accused was inside. One unknown person had come outside and same unknown person seems to be apprehended. This goes to show that there was no meeting between complainant and accused no.1 and further, there is also no evidence to show that accuse no.2 acted at the instance of accused no.1. Defence has put up a specific case of thrusting. As pointed out, material witnesses like daughter of complainant, in whose presence

there was said to be demand, has not been examined. Again, it has come on record that, witnesses were permitted to go through panchanama before stepping into the witness box, which is not permissible. Even sanctioning authority has admitted that, not he, but Government was the appointing authority. In view of such submissions, even sanction comes under shadow of doubt.

10. To sum up, initial demand is not proved. PW2 and PW3 both admit that the mobile, in which conversation of demand was allegedly heard by making call to accused no.1 and putting the mobile phone on speaker mode, had no speaker facility itself. There were no direct talks between PW2 complainant and accused no.1 on the day of main trap. Resultantly, as both, demand and acceptance are not proved, no fault can be found in the manner of appreciation and in acquitting both the accused. No case is made out on merits so as to accord leave.

Hence the following order :

ORDER

- I. Leave refused.
- II. Application is rejected.

[ABHAY S. WAGHWASE, J.]