



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 115 OF 2023

The State of Maharashtra
Through- Police Inspector,
(Anti Com:ption Bureau)
Police Station, Sangamner,
Dist. Ahmednagar.

... Applicant

Versus

Vijay Rakhmaji Mandlik,
Age : 59 years, Occ. : Service,
R/o. A-8, Ghulewadi Police Colony,
Sagamner, Taluka- Sangamner,
Dist. Ahmednagar.

... Respondent

.....
Mr. S. A. Gaikwad, APP for Applicant – State.
Mr. Joydeep Chatterji, Advocate for Respondent.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 02 DECEMBER 2025

PRONOUNCED ON : 12 DECEMBER 2025

ORDER :

1. Present application for leave to file appeal is at the behest of State as it intends to challenge the judgment and order of acquittal dated 20.07.2023 passed by learned Additional Sessions Judge, Sangamner, Dist. Ahmednagar in Special Case No. 25 of 2014 acquitting accused from the offence punishable under under sections 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act.

2. In trial court, prosecution was launched against present respondent on the premise that, accused in the capacity of Investigating Officer of Crime No. 119 of 2013, for handing down a favourable say to the complainant to enable him to seek bail and to get his seized vehicle released, demanded bribe amount of Rs.10,000/- and on negotiations, he agreed to pay Rs.5,000/-. As complainant was not willing to pay bribe, he lodged complaint with ACB office Exh.31. On the basis of which, Investigating Officer planned and executed trap, and finally apprehended the accused, lodged complaint on behalf of State and on completion of investigation, charge sheeted accused and he was made to face trial before Special Court. The case was tried before the learned trial court and vide judgment and order dated 20.07.2023 accused was acquitted. State now intends to assail the said judgment, and hence, he is urging for leave to appeal.

3. According to learned APP, for issuing favourable say in Bail Application and for releasing vehicle of complainant, there was demand of bribe. That, initially Investigating Officer got verification of demand done on 05.08.2013, and thereafter, planned trap by engaging independent panch witnesses. That, demand as well as acceptance was proved. That, necessary sanction was obtained. However, according to learned APP, learned trial court gave undue importance to and raised

suspicion over the criminal antecedents of complainant, even when it was not necessary and when moreover complaint was regarding demand of illegal gratification. He pointed out that, even findings of learned trial court regarding demand to be not proved, are incorrect. He took this court through the testimony of PW1 in support of above contentions.

4. He also took this court through the evidence of PW2 and would submit that this witness has supported PW1 on the aspect of demand and acceptance. That, though there was demand by gesture, it was clear demand of money, according to him, presumption available under section 20 of P.C. Act ought to have been invoked, more particularly when there was both, transcript of conversation of demand and its report being positive. He pointed out that, here, learned trial court had already accepted sanction to be valid, but according to him, accused is erroneously acquitted without assigning sound reasons and so he urges for leave.

5. In answer to above, learned counsel for respondent accused would submit that, there are several shortfall in the case of prosecution. That, complainant himself has admitted in cross that he had not stated portion mark A, B, C, D and E and there itself according to him, case of complainant as well as prosecution had collapsed on the point of demand

as well as acceptance. He pointed out that, the omissions got proved through Investigating Officer. According to him, complainant had checkered history and it is so evident from the answers given in cross, and therefore, evidence of complainant was not worthy of credence. According to him, PW1 and PW2 are not consistent on the point of demand, and moreover, same was said to be by way of gestures. He pointed out that, PW2 has admitted that he himself did not see transaction of demand and acceptance between complainant and accused. Therefore, for above reasons, he supports the findings and conclusion recorded by trial court and prays to refuse leave.

6. Heard. Perused the record. PW1 seems to be complainant, PW2 seems to be shadow panch; PW3 and PW4 seems to be the Investigating Officer and PW5 seems to be sanctioning authority.

7. In short, it is the case of prosecution that, for giving favourable say on bail application and application for return of vehicle, in the capacity of Investigating Officer, there was demand of Rs.10,000/- by accused which was finally negotiated and brought down to Rs.5,000/- and therefore, complaint to that extent was received and investigated.

8. Perused the evidence. As usual evidence of complainant PW1 and that of PW2 is of significance. Evidence of complainant is at Exh.30.

He deposed that for giving favourable say on bail application as well as for return of vehicle, there was initial demand of Rs. 10,000/- and on negotiation it was brought down to Rs.5,000/- and an amount of Rs.2,000/- to be paid after work. In paragraph 6, he has testified about the events that took place at the time of demand verification. Here, he speaks of accused asking about money by making gestures. In his statement to police, the narration given by him in examination-in-chief does not carry particulars and details of portion marked 'A' regarding the accused making a phone call to ascertain the whereabouts.

In cross examination, complainant has admitted that there was no verbal demand.

9. PW2 shadow panch, who is examined at Exh.38, has narrated in paragraph 5 the events at the hotel at the time of demand verification. According to him, conversation took place between accused and complainant. At that time, accused merely asked "what happen" and further said "you have not come", upon which, complainant allegedly said that, "he would give". Complainant himself told that he would give the amount of Rs.5,000/- tomorrow. Apparently, there is no direct demand from complainant. Even in paragraph 15, he speaks about gestures made at the time of main trap. In same paragraph, he also admitted that, he did not see complainant handing over amount to

accused. Therefore, this witness PW2 who is looked upon as a crucial and independent witness, has categorically stated that act of handing over and acceptance of money did not take place in his presence. He has also admitted about defence taken by accused regarding thrusting of tainted currency.

Further it is emerging that, at the time of alleged main trap, there was no work pending with accused and Investigating Officer has also admitted to that extent. Investigating Officer has also admitted that in Exh.50, which is a script of conversation, there is no reference of demand.

10. Therefore, with such quality of evidence, case of persecution indeed weak on material counts, and therefore, no fault can be found in the manner of appreciation or conclusion to further accord leave. No case being made out on merits, I proceed to pass the following order :-

ORDER

- (i) Leave is refused.
- (ii) Application is rejected.

(ABHAY S. WAGHWASE, J.)