

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.07 OF 2026

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

... Applicant

Versus

Machhindra Bander Rao Padale,
Age : 50 years, Occu. : Govt. Service,
P.H.C., Police Station, Mukundwadi,
Aurangabad City, Dist. Aurangabad.
R/o. Sara Vaibhav, House No. C-10,
Jatwada Road, Aurangabad.

... Respondent
(Orig. Accused)

.....
Mr. N. S. Tekale, APP for Applicant – State.
Mr. Satej S. Jadhav, Advocate for Respondent.
.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 06 APRIL 2026
PRONOUNCED ON : 07 APRIL 2026

ORDER :

1. Instant leave to file appeal is on behalf of State, as it is keen in challenging the judgment and order of acquittal dated 30.08.2023 passed by learned Special Judge (P.C. Act), (Court No.6), Aurangabad in Special Case (ACB) No.05 of 2017.

2. Present respondent was charge-sheeted for commission of offence under sections 7, 13(1)(d) read with section 13(2) of

Prevention of Corruption Act, on the allegations that, for not initiating action of arrest against informant on receipt of complaint of one Parvin Shaikh Nisar, there was demand of Rs.5,000/- i.e. for avoiding action of chapter proceedings. Complainant as was not willing to pay the bribe, he approached Anti Corruption Bureau, lodged complaint, on the basis of which, Anti Corruption Bureau authorities i.e. PW3 planned and executed trap. On being charge sheeted, accused was tried before above Special Court vide Special Case (ACB) No. 05 of 2017. Prosecution adduced evidence of in all three witnesses and also relied on documentary evidence.

After hearing both the parties, learned trial Judge came to a finding that, prosecution failed to prove motive, demand as well as acceptance, and thereby acquitted the accused. Hence, instant application for leave to appeal.

3. Learned APP would submit that, complaint was received from one Sainath Vitthal Gaware that, accused, who was a policeman, demanded bribe of Rs.5,000/- to avoid action of chapter case, on receipt of a complaint. Learned APP pointed out that, during investigation, panchas were arranged and both informant and shadow panch were given necessary instructions. That, demand verification was done by recording the conversation, thereafter, main

trap was laid, during which the accused was apprehended.

4. However, learned APP submitted that, unfortunately, informant was not available for testimony on account of his demise, but still, according to him, there was evidence of shadow panch, who was very much in the company of complainant and was a party to the entire episode of demand verification as well as main trap. He has deposed about verification of demand being got done and only on satisfaction, trap being laid and it being successful. Therefore, it is his submission that evidence of shadow panch ought to have been relied and taken recourse to.

5. He further submitted that, here, defence had admitted sanction before learned trial Court, but still learned trial Court recorded a finding that, sanction is without application of mind, and therefore, he questions the above approach of learned trial court. Lastly, he submitted that, there was trustworthy evidence in the form of conversation, which was recorded i.e. conversation between complainant and accused. Its panchanama was proved through PW2, but still according to him, learned trial Court erred in holding that there was no motive to prove demand. For such reasons, it is his submission that, prosecution has a good case in appeal, and therefore, he urges for leave.

6. Learned counsel for respondent original accused would justify the order of acquittal by pointing out that, here, there was no evidence of very informant. Therefore, he questions to whom the testimony of PW2 corroborates. He pointed out that, even it emerged before learned trial Court that necessary action was already initiated against complainant and surety was also furnished. Thus, it is his submission that, at the outset, there was no motive to demand gratification as there was no work with accused at all. For above reasons, he justifies the order of acquittal.

7. Heard. Perused the papers. It is emerging that, vide above case, prosecution was launched against accused on allegation of demand of bribe of Rs.5,000/- to avoid action of chapter proceedings. After investigation, prosecution adduced evidence of in all three witnesses. Unfortunately, it seems that there was no evidence of very informant as he had expired, and therefore, there is no evidence on the point of initial demand.

8. Case of prosecution rested on testimony of shadow panch and he is examined as PW1 at Exh.25, wherein he narrated that, in Anti Corruption Bureau Office, the complainant Sainath narrated his story about bribe being demanded by accused, a police constable posted at Mukundwadi police station. In his testimony, he deposed

about verification of demand got done by sending him and complainant with voice recorder after giving necessary instructions. He has deposed that, around 11:40 a.m., he and complainant reached the police station and according to him, there was a conversation between accused and the complainant. He stated that, he does not remember the exact conversation, but he claims it was with reference to not to arrest complainant, and that the accused demanded Rs.5,000/-. Therefore, testimony of above witness on the point of conversation is ambiguous and not specific and clear.

9. It is further noticed that, regarding main trap he deposed about instructions being given, but thereafter, on repeated questioning by learned APP, witness states that he is unable to depose further on that count. Finally, learned Prosecutor seems to have obtained permission of Court to declare the witness hostile and proceeded to cross examine him by putting suggestion and virtually to each and every suggestion he has answered in 'affirmative'. While under cross, at the hands of accused, he has admitted that, complaint was regarding demand of money for not to arrest. He further admitted that, whatever is suggested to him he agreed to the same. Therefore, such answers shows that, though while under cross at the hands of learned APP, this witness has affirmed to every suggestion, in view of the above answers given by him, it is emerging that, on

every suggestion, he admits. For said reason, his testimony cannot be said to be worthy of credence.

10. Here, in cases of such nature, complainant is always looked upon as an interested witness, and therefore, corroboration is required from independent panch. But, in the light of above answers by PW1 shadow panch, it cannot be said that he is lending corroboration as he is admitting to every suggestion put by prosecutor in the cross examination to be true.

11. Here, unfortunately, informant is not available for testimony and there is no corroboration to the story of prosecution.

12. Solitary piece of evidence is demand verification panchanama in the form of conversation Exh.33 as well as spot panchanama. The conversation, which is at Exh.33, i.e. between deceased informant and accused, shows that, it is the informant who is repeatedly opening the subject of amount, and it is he who seems to have proposed to the accused as to how much bribe should be paid to dispose of the second complaint. Therefore, prior to any demand by accused, there seems to be an offer of bribe.

13. Moreover, as pointed out in Exh.38 spot panchanama, which is a post trap event, there is no reference about demand by

accused or about him stating that unless Rs.2,000/- to Rs.5,000/- is paid, complainant would be arrested.

14. Again, chapter case is shown to be initiated against informant and in that backdrop, he had already arranged surety. Therefore, with such material, it is doubtful whether there was any work with accused so as to attribute motive to him.

15. For above reasons, there being no good point on merit, leave cannot be granted as no purpose would be served by granting leave with such quality of evidence. Hence, the following order is passed :

ORDER

- (i) Leave is refused.
- (ii) Application for Leave to Appeal by State is rejected.

(ABHAY S. WAGHWASE, J.)