



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 100 OF 2024

The State of Maharashtra
through Police Inspector,
Police Station CIDCO,
District Aurangabad.

... Applicant

Versus

Bhaskar Nagorao Ghodke,
Age : 42 years, Occ. PHC B.No.2405,
R/o. Building No.32, H.No.6, N-10,
Police Colony, HUDCO, Aurangabad.

... Respondent

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Mr. S. G. Sangle, Advocate for the Applicant-State.
Mr. Joydeep Chatterji, Advocate for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 28.01.2026

Pronounced on : 30.01.2026

ORDER :

1. This leave to file appeal is on behalf of State who, on getting dissatisfied by order dated 08.11.2023 passed by learned Additional Sessions Judge and Special Judge, Anti Corruption, Aurangabad in Special (ACB) No. 22 of 2015, thereby acquitting present respondent from offence under Sections 7, 13(1)(d) and 13 (2) of the Prevention of Corruption Act, 1988.

2. In short, prosecution was launched against present respondent vide above Special Case on receipt of complaint from PW2 Milind against present accused for demanding Rs.2,000/- to avoid his arrest by virtue of arrest warrant issued by Railway Court, Aurangabad. It was specific case of prosecution that, on account of non payment of installment, warrant came to be issued by the court and it was handed over to accused for its execution, who allegedly assured to prevent arrest and production before Court if at all his demand of Rs.2,000/- is met. On receipt of above complaint, ACB authorities planned and executed trap by engaging independent pancha. After obtaining sanction, vide above case, accused was tried but he stood acquitted and so, as State is keen in filing appeal, instant leave application.

3. Learned APP appraised this Court about the above factual background of the case and would submit that there was demand of bribe and on receipt of report to that extent, after summoning pancha, Investigating Officer (IO) had given necessary instructions for planning and execution of trap. He pointed out that, prior to trap, verification of demand was got done and only after its confirmation, trap was laid and it was also successful.

4. He further submitted that, on the day of trap, both, complainant and pancha, who were in each other's company, had approached accused. The said trap was set near TV Center Police Chowki in front of Hotel Uttam. After having tea there, accused put up demand and tainted currency was handed over on such demand to the accused, who accepted it. Thus, according to learned APP, there is demand as well as acceptance but, it is his submission that, learned trial court has failed to consider and appreciate said evidence. That, some minor omissions in the panchanama are given undue weightage. According to learned APP, core of the prosecution case of demand and acceptance was demonstrated by the prosecution, but same is not taken into account. He pointed out that, even sanction was valid and therefore, learned trial court ought to have accepted the case of prosecution. But it having failed and acquittal being granted, it is his submission that, prosecution has a good case in appeal where there would be re-appreciation of evidence. So he urges for leave.

5. In answer to above, learned counsel for accused-respondent would support the judgment of acquittal pointing out that, here, demand itself has not been cogently proved. That, there are contradictions in the testimony of pancha witness and IO on the point of conversation between complainant and accused at the time of

verification of demand. He pointed out that, in fact, the memory card in which there was conversation itself, has not been seized by IO and for above reasons, he supports the order of acquittal as demand itself has not been proved. On the point of essence of demand to be initially established, he seeks reliance on the judgment of Hon'ble Apex Court in the case of *Ashok Kumar Ambalal Patel v. State of Gujarat*, [Criminal Appeal No. 665 of 2019 decided on 20.08.2025]

6. Re-visited the evidence, more particularly that of PW2 complainant and PW3 pancha. In short, prosecution was launched on the premise that, for avoiding arrest an execution of warrant issued by Court, accused-a police constable, put up demand of Rs.2,000/-.

7. Evidence of PW2 complainant is at Exhibit 29/C. According to complainant, when above amount was demanded for favouring him, accused had passed on his mobile number asking complainant to call after arrangement is made. On next day, he made phone call and he was called with money, but as complainant was not willing to pay bribe, he approached ACB. He has deposed about verification of demand being done while he was in the company of shadow pancha and such verification was done at Bajrang Chowk area in front of hotel Sukhsagar. He claims that, they all entered a tea stall and then

talks were initiated. His such testimony shows that, what conversation took place between him and accused has not come on record. He merely stated that accused demanded Rs.2,000/- from him, but he expressed his inability to meet such demand. On negotiations, amount was said to be brought down to Rs.1000/-. The said conversation which was got recorded in a voice recorded was handed over to the IO followed by arrangement of main trap. Regarding main trap, he has deposed in para 6. Here again, while sitting in a hotel and while taking tea, he claims to have asked accused about his work and accused demanded amount of Rs.1,000/- which was duly handed over and accepted. However, while under cross, complainant seems to have admitted that he never called accused after 06.07.2014 till the date of incident. Therefore, the very aspect of demand made on telephone has come under shadow of doubt.

8. PW3 pancha, who is equally, rather more crucial witness, has also testified at Exhibit 50. He also deposed about pre-trap and verification of bribe and its panchanama being drawn. However, in his chief itself he stated that, when he, accused and complainant were having tea, it is his testimony that, there was discussion about work. Again, this witness further deposed that accused asked complainant whether Rs.2,000/- were brought and on negotiations, amount was

brought down to Rs.1,000/-. Regarding the actual incident of demand, i.e. main trap, this witness has stated that it had taken place on 07.07.2014. However, according to him, when they were in the vicinity of TV Center, one person came on motorcycle and that person, complainant and this witness went to take tea. After demand by that person, complainant handed over Rs.1,000/-. Therefore, this witness does not speak about initial conversation about work of complainant. Another pertinent feature is that, this witness PW3 is unable to state when he exactly visited the ACB office. He is also unable to state whether one memory card was used at the time of verification of demand. As pointed out by learned counsel for accused-respondent, that entire conversation is also not finding place in the trap panchanama.

9. It is also pointed out by learned counsel for the accused that, in fact, on the day of trap, no work was at all pending with accused and regarding this, learned trial court has extensively discussed in para 56 which shows that, said warrant was already returned to the court and therefore, the story of prosecution that, for not executing warrant there was demand of bribe, itself comes under shadow of doubt.

10. According to IO, two memory cards were used to record the conversation, but he admitted that, said memory cards were not at all seized by him. Therefore, there is no credible evidence on the point of actual demand except oral evidence in the court.

11. Further, there is no identification of voice of accused, as natural voice of accused does not seem to have been taken. PW3-independent pancha seems to have merely identified voice, but contents of the demand of bribe were neither played nor made available for hearing to this witness while drawing panchanama. This also inflicts blow to the story of prosecution. Further PW3-pancha has merely deposed about person making demand but what quantum was demanded is not stated by this independent witness.

12. Further, as pointed out by learned counsel for the respondent, pancha witness was made available the panchanama before stepping into the witness box which is impermissible in view of ruling of this Court in the case of *Sharad Namdeorao Shirbhate Vs. State of Maharashtra*, 2007 ALL MR (Cri) 352. Therefore said testimony of independent witness also cannot be completely relied.

13. Defence case is that, accused had already submitted the NBW and report of its non-execution in the court. Further, even complainant seems to have admitted about making call to the accused to inform that he had already deposited the second installment in the court of which he was given receipt. Therefore, prior to the main trap in the morning of 07.07.2014 itself, NBW and the report was tendered in the Court and therefore there was no motive for accused to demand or accept bribe.

14. For above reasons, judgment and order of acquittal, which is based on sound reasons, cannot be said to be perverse so as to accord leave. Hence, following order :

ORDER

- I Leave refused.
- II. The application is dismissed

[ABHAY S. WAGHWASE, J.]