



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 110 OF 2025

State of Maharashtra,
Through : Police Inspector,
Police Station : Harsul,
Aurangabad.

... Applicant

Versus

Satish s/o Yashvantrao Jadhav,
Age : 52 years, Occu : Service PHC,
R/o : Cidco, N-11, C-5, H.No. 29/6,
Dwarkanagar, Aurangabad.

... Respondent
[Orig. Accused]

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Mr. P. P. Dawalkar, APP for Applicant-State.
Mr. Nilesh S. Ghanekar, Advocate for Respondent.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 16.03.2026

Pronounced on : 17.03.2026

ORDER :

1. Feeling aggrieved by judgment and order of acquittal passed by learned Special Judge (P.C. Act), Aurangabad in Special Case (ACB) No. 15 of 2011, State has preferred instant application for leave to file appeal.

2. Learned APP pointed out that, ACB received complaint from PW2 Kashinath that, he and his colleague Sanjay Bodre had lodged

complaint at Commissioner of Police, Aurangabad against threats given by one lady, namely, Nirmala, who was doing some plotting business with complainant and Barde. That, said application was transferred to Harsul Police Station where accused, who was a Head Constable, was entrusted with the said matter. That, complaint was received that for not taking action, there was demand of Rs.8,000/- and on complaint Exhibit 25 to that extent, ACB authorities planned trap. He further pointed out that independent panchas were summoned and engaged. Verification of demand was got done by recording the conversation. Thereafter, on getting convinced about demand, trap was planned and executed. That, there was demand as well as acceptance. Prosecution witnesses, more particularly PW2 complainant and shadow pancha were consistent. That, in spite of so, there is acquittal by erroneously holding that there was no corroboration to the testimony of complainant on the point of demand, and that witnesses were made aware of the investigation papers prior to deposition. According to him, there was sufficient evidence to draw presumption available under Section 20 of PC Act. That, all such material is lost sight of. That, prosecution has a good case in appeal and hence he urges for grant of leave

3. In answer to above, learned counsel Mr. Ghanekar would point out that case of prosecution is not proved beyond reasonable doubt. According to him, initial aspect of demand itself has not been proved and therefore, according to him, mere recovery of tainted currency is of no significance. He pointed out that, there is no corroboration to the testimony of complainant about demand as, at the time of verification of demand, shadow pancha was far away and he could not hear the actual conversation between complainant and accused and there is admission to that extent by shadow pancha.

4. He next submitted that prosecution witnesses, including Investigating Officer, have admitted that there was CCTV camera at the relevant spot of demand and acceptance, but no CCTV footage is gathered. Thus, according to him, there was no corroboration in any manner to the prosecution story. He pointed out that, though attempt was made to record the conversation, on the point of demand, conversation is not clear and moreover voice recorder was not placed before the court and this turned out to be fatal for prosecution.

5. Lastly he submitted that when it was the case of prosecution that there was demand on telephonic conversation, it was expected of investigating machinery to gather CDR, but the same is not gathered.

Thus, according to him, there are several lapses in the prosecution story rendering it doubtful. Therefore, he justifies acquittal and prays to dismiss the application for want of merits.

6. In the light of above submissions, evidence on record is visited. In short, case of prosecution is that, there was demand of bribe to prevent action against complainant in a complaint filed by said Nirmala. Admittedly, story of prosecution is rested on four witnesses. As usual, evidence of complainant and shadow pancha is crucial. In cases of such nature, when complainant is looked upon as an accomplice, corroboration is insisted for. Bearing this principle in mind, evidence is tested to ascertain whether there is any merit in the prosecution story so as to accord leave.

7. It seems that on receipt of complaint from PW2 Kashinath, ACB authorities planned trap by engaging PW3 Nikhil. Complainant's evidence is that, when he made telephone call to accused, there was said to be demand, but as pointed out, details of call are not gathered by Investigating Officer to substantiate demand. Therefore aspect of demand has itself come under shadow of doubt. It is further emerging that for verifying the demand, these two witnesses, i.e. PW2 and PW3, were instructed to carry voice recorder and record the

conversation. But PW3, an independent witness, in his cross seems to have candidly admitted that when conversation was going on, he was 50 to 60 feet away from complainant and accused, and that he could not hear the conversation between them.

8. As pointed out, it is also emerging that, at the place of trap there were CCTV cameras and it is so reflected in the panchanama, but surprisingly CCTV footage is not gathered. On this point, in the trial court learned counsel for the accused seems to have placed reliance on the judgment of Hon'ble Supreme Court in the case of *Tomaso Bruno and another v. State of U.P.*, in Criminal Appeal No 142 of 2015. Similarly witnesses are shown to have been supplied with investigation papers before deposing, which this court has held to be impermissible in view of judgment in *Sharad s/o Namdeorao Shirbhate v. State of Maharashtra* 2006 (2) Mh.L.J. 1210.

9. It is also seen that, since inception i.e. at the time of alleged demand and complaint, there is reference to one Sanjay Barde to be in the company of complainant, but surprisingly he is not examined.

10 Therefore, on taking overall survey of the above quality of evidence, there does not seem to be error on the part of learned trial

court in refusing to accept the case of prosecution as proved. No point on merit being made out, following order is passed :

ORDER

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

[ABHAY S. WAGHWASE, J.]

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