



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.111 OF 2025

The State of Maharashtra,
Through Police Station, Omerga,
Tq. Omerga, Dist. Dharashiv.

... Applicant

Versus

1. Ramesh Fulchand Mane,
Age : 55 years, Occu. : Service,
R/o. Chalukya Colony, Omerga,
Tq. Omerga, Dist. Dharashiv.

2. Gafur Mahammad Auti,
Age: 34 years, Occu. : Service,
R/o. Ganesh Nagar Mulaj Road, Omerga,
Tq. Omerga, Dist. Dharashiv.

... Respondents
(Orig. Accused)

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Mrs. Saie Swapnil Joshi, APP for Applicant – State.
Mr. Anant R. Devakate, Advocate for Respondents.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 20 APRIL 2026

PRONOUNCED ON : 23 APRIL 2026

ORDER :

1. This is an application for leave to file appeal by State in consequence to judgment and order dated 09.05.2025 passed by learned Special Judge (Under P.C. Act), Omerga, Dist. Dharashiv in Special Case (ACB) No. 1 of 2015.

2. Learned APP submitted that, accused no.1 is a Talathi, whereas

accused no.2 is a Kotwal. She pointed out that, complainant had approached office of accused no.1 for mutation entry in the name of his mother and brothers on account of demise of his father. Therefore, for carrying out mutation entry, there was demand of Rs.1,000/- and it was duly reported to Anti Corruption Bureau office, who had planned and laid trap. According to her, it was also successful.

3. She further submits that, initial demand of Rs.2,000/- was made, and on negotiations, was reduced to Rs.1,000/- on 16.09.2014, and complaint was lodged on 19.09.2014. She pointed out that, accused no.2 initially demanded and accepted the bribe and further it handed over to accused no.1. That, anthracene traces were noticed to the hands of both the accused. Thus according to her, there was demand as well as acceptance and evidence of complainant and shadow panch is consistent to that extent. She further pointed out that, here, sanction is accorded by PW1 after due application of mind and according to her, though sanctioning authority was Sub Divisional Officer, said witness had power to appoint and remove accused persons, and therefore, she questions the finding of learned trial court that sanction is not valid. According to her, prosecution has a good case on merits, and therefore, she urges for leave.

4. Supporting and justifying the order of acquittal, learned counsel for accused would submit that, prosecution had miserably failed to

prove the demand. According to him, there was no demand by accused no.2. That, even otherwise, case of prosecution is that, accused no.2 had demanded bribe, but he was not competent to carryout mutation entry. That, there is no evidence to connect accused no.1 with accused no.2. Moreover, according to him, recovery is not from the person of either of the accused, but it is from below the mat (satranji), and thus, according to him, case of prosecution, on the point of both demand as well as acceptance is unreliable, and therefore, with such quality of evidence he submits that leave be refused.

5. Heard. Perused the record including evidence of prosecution witnesses in trial court. It is noticed thereupon that, according to PW2 complainant, for carrying out mutation entry, he claims to have visited Talathi office, Omerga and in examination-in-chief itself, he deposed about meeting with accused no.2, who was a Kotwal and according to him, said Kotwal put up demand of Rs.2,000/- to do the work. He claims that, thereafter, he lodged report with Anti Corruption Bureau at Exh.42 and on 19.09.2014, he and shadow panch, after planning of trap, approached the office of Talathi, but again he states that, at that time accused no.2 was in the office and he was asked about the work, upon which accused no.2 allegedly counter questioned whether expenses are brought, and therefore, he handed over tainted currency to accused no.2, and later on, accused no.1

came and accused no.2 handed it over to accused no.1. According to him, after the raiding party came, money was recovered from the beneath of mat (satranji).

Therefore, above evidence clearly shows that, firstly there is no demand by accused no.1 Talathi. Entire meeting and conversation is with accused no.2, who is a Kotwal i.e. peon. There is nothing to show that accused no.2 acted at the behest of accused no.1. In fact, it appears that at no point of time, there was interaction between complainant and accused no.1.

6. PW3 Vilas is the shadow panch and his testimony is always looked upon for corroboration to the testimony of complainant. He, in his evidence at Exh.50 deposed that, on 19.09.2014, he and complainant proceeded on motorcycle, that time, voice recorder was planted in the pocket of the complainant. It is to be noted that, such is not the version of complainant at all. Further according to this witness, complainant approached writer and he allegedly demanded Rs.2,000/-. He further deposed that, writer further said to give it to him or to accused no.1 Talathi. After a short while accused no.1 Talathi came and according to him, PW2 made complaint with accused no.1 about bribe demanded by accused no.2. Such is not the narration of complainant himself. According to this witness, complainant handed over one currency notes of Rs.500/- and five currency

of denomination of Rs.100/-, which he allegedly counted and kept it in the pocket. This is not stated by complainant himself.

7. Admittedly, currency was found from beneath the mat and not in the possession of either of the accused.

8. Another point which seems to have gone against the prosecution in the trial court is the sanction. In this case, PW1 Bhodhwad was examined as Sanctioning Authority, but he was Sub Divisional Officer and in cross examination, he has volunteered that, the Collector selects, but appointment is made by Sub Divisional Officer. He also admitted that, at the time of appointment of accused no.1, he was not officiating as Sub Divisional Officer. Though learned APP placed on record rulings of this Court as well as the Hon'ble Apex Court, facts in those cases are distinct than the one in case in hand, and therefore, the same cannot be taken recourse to. When this witness has admitted that, selection was done by the Collector, obviously said authority is competent to remove or accord sanction.

9. Consequently, in the light of above discussion, there are several lacunas and shortfalls in the prosecution story. There is no demand by accused no.1 at any point of time. Demand is attributed to accused no.2 who is said to be a peon and though it is a case of prosecution that accused

no.2 demanded and accepted at the behest of accused no.1, there is nothing to show that there was prior meeting between them regarding agreement to demand and accept bribe. There are no efforts by the investigating machinery to get demand verified, which is the usual practice before laying the main trap. With such quality of evidence, in the considered opinion of this court, no purpose would be served by according leave. For such reasons, leave deserves to be refused. 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.)