



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 155 OF 2025

The State of Maharashtra,
Through Police Station Officer,
Kranti Chowk, Aurangabad

... Applicant

Versus

1. Sudhir Dinkarrao Jaybhaye,
Age : 42 years, Occu. : Service,
R/o. Plot No. 39, Maharana Pratp
Housing Society, N-7, Cidco,
Aurangabad

2. Upendra @ Bapu Jayprakash Rai,
Age : 33 years, Occu. : Nil.,
R/o. Near Municipal Corporation Sweeming
Tank, Garam Pani, Aurangabad

... Respondents

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Mr.S. G. Sangle, APP for Applicant – State.
Mr.Joydeep Chatterji h/f.Mr.P.D.Bachate, Advocate for Respondent No.1.
Mr. Sachin S. Pande, Advocate for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 27 MARCH 2026
PRONOUNCED ON : 01 APRIL 2026

ORDER :

1. This is leave to file appeal by State on account of judgment and order of acquittal passed by learned Additional Sessions Judge and Special Judge, Aurangabad in Special (ACB) Case No. 9 of 2017 from charges under sections 2(c), 7, 12, 13(1)(d) r/w section 13(2) of the Prevention of Corruption Act, 1988.

2. Above special case was conducted on prosecution launched by Kranti Chowk Police Station on receipt of complaint from ACB Aurangabad. That, complainant a RTO agent had applied for permit of school bus on behalf of one said Saifuddin Abbas. In all, 21 proposals were tendered for renewal with R.T.O. Office on 18.01.2016. According to complainant, accused no.1 an Assistant Road Transport Officer demanded Rs.10,000/- through accused no.2, and therefore, on receipt of complaint to that extent, PW4 Dy.S.P. Saraf, an Investigating Officer, planned trap and executed it i.e. by apprehending accused persons and charge sheeting them. Case was tried before the learned Special Court bearing Special (ACB) Case No. 9 of 2017, but the trial concluded into acquittal. Hence, instant leave application by State.

3. Learned APP would point out that, accused no.1 is a Government servant, whereas accused no.2 is a private person. That, demand of Rs.10,000/- was raised by accused no.1 and on negotiations, it was brought down to Rs.7,000/-. That, accused no.1 in presence of shadow panch directed complainant to make payment to accused no.2. Thus, on verification of demand, main trap was laid and it was also successful. However, according to him, learned trial Court recorded the findings that, firstly, there was no work with accused no.1; Secondly, there was no direct demand of bribe either by

accused no.1 or by accused no.2, and moreover, complainant was noted to be habitual complainant. He also pointed out that, prosecution case also did not found favour on the ground of validity of sanction. However, according to him, the above findings are as a result of incorrect appreciation of evidence and failure to apply correct law. Thus, there being good case on merits, he prays to grant leave.

4. Learned counsel for respondents accused would justify the order of acquittal by pointing out that, prosecution has miserably failed to prove the charges. That, neither demand by either of the accused was proved. That, there was no material to connect accused nos.1 and 2 on the point of demand. He pointed out that, accused no.2 was a private person and he was not aware of any bribe being given to him. Moreover, there was no material to show that accused no.2 had accepted the bribe on behalf of accused no.1. He also pointed out that, PW1 Prakash Sable was a Deputy Secretary ranking officer and he had in cross examination admitted that, it was not a fit case for according sanction, and moreover, the prosecution has still obtained sanction from Law and Judiciary department. Therefore in view of the conflicting opinion, learned trial court rightly held that, sanction was not valid as it was not granted after due application of mind.

5. In the light of charge, it is to be seen whether there was demand and acceptance. PW2 and PW3 are complainant and shadow panch, respectively.

Evidence of complainant PW2 Athar Khan is at Exh.67 and he stated about approaching accused no.1 a R.T.O. Officer for considering renewal and issuance of permit of school buses. He claims that he made payments of Rs.11,350/- towards Government fees and carried the receipt to the accused no.1, who allegedly told him to pay Rs.10,000/- towards G-form to a boy outside the cabin. Upon which, he claims to have asked accused what is the G-form and accused no.1 allegedly asked him whether he was mad and he would have to pay Rs.10,000/-. As he was not willing, he approached Anti Corruption Bureau office. In his evidence, he narrated about the events taken place regarding to visit ACB office, in presence of shadow panch they being given necessary instructions and to go to the office of accused with voice recorder for verifying the demand. Regarding the events at the office, he deposed in paragraph no.4 that he again approached accused and made inquiry of his work, accused told him that he would be required G-form. While in the witness box, this witness has himself stated that, G-form is the code word of demanding money. Then he deposed that, on his request, accused no.1 reduced the amount Rs.10,000/- to Rs.7,000/- and he came out

of the cabin and met accused no.2 and told him about conversation with accused no.1, who allegedly said that okay, and thereafter, they came out of the office and handed over the recorder, which was heard and transcript was drawn. According to him, again on 21.01.2016, he and panch were directed to carry voice recorder and to approach accused and accordingly when they went, witness claims that, he and panch approached R.T.O. office and directly went to accused no.2 and asked whether work was done and he allegedly said 'yes' and then they stated that as per the instructions of accused no.1, he paid the amount to accused no.2, and thereafter relayed signal.

6. Thus, from above testimony of complainant, it is emerging that, there was a conversation about the work and accused no.1 allegedly said that he would require a G-form. According to PW1 complainant, it was the code word for money, but its clarification is given by witness and not by prosecution. Thus, there is no direct demand by accused no.1., even the chronology of events stated by above witness shows that during the day of main trap, there was no meeting with accused no.1 and complainant. Rather, complainant seems to have directly approached accused no.1 and even when he has not raised any demand, complainant claims to have state that, as per instructions of accused no.1 he is paying amount. Therefore, apparently there is weak or no evidence on the point of demand.

Utterance attributed to accused no.1 is of giving G-form. Though prosecution claims that it was the code word, there is no supportive evidence. Further, in paragraph no.16 of complainant's cross, there are material omissions about the above conversation, which are not findings place in his statement to police. Even there is omission that he was required to pay amount to accused no.2 as per the instructions of accused no.1.

7. PW3 Amit, shadow panch deposed that when he and complainant went in the cabin of accused no.1, one person was already sitting there and after he went, complainant told accused no.1 that, "*sir babune total mara tha, das ho rahe*". Upon which, accused allegedly said that no problem and then complainant again said to accused, "*mai bola thoda hisabse bakika second lot me kar denge*". Upon which, accused no.1 said, "*tumhare hisabse*" and complainant handed over file to accused, who kept it on cabin and again said that "*Rs.10,000/- or Rs.7,000/- second lot me adjust karenge*". Upon which accused said, no problem and signed. They came out of cabin and complainant went to accused no.2 and told that he had kept the file inside the chamber, upon which accused no.2 said okay and he thereafter took out paper and wrote "*BT ke pachisau, regular renewal letter ke Rs.1035/-*" and after totaling it comes to Rs.9,500/- and thereafter complainant told to count, which was

counted and it came to Rs.7,000/- and complainant agreed to pay Rs.7,000/-. Upon which accused said 'ok', and thereafter, they left the R.T.O. Office. In paragraph no. 7, he narrated the instance of main trap, wherein he stated that, when they went to R.T.O. office, as per settlement, complainant paid amount to accused no.2, who accepted the amount.

Thus, from the evidence of shadow panch also, firstly there is variance in the events and conversation that took place between complainant and accused no.1 inside the cabin. Secondly, even complainant seems to have paid amount to accused no.2 prior to demand itself.

8. Resultantly, from the evidence of complainant and shadow panch, demand itself comes under shadow of doubt. As regards to accused no.2 is concerned, he seems to have made total towards the permit and its charges. There is nothing to show that he accepted bribe at the instance of accused no.1.

9. As regards to sanction is concerned, prosecution has adduced evidence of PW1 Prakash Sable, but, Exh.66 which is the report authored by him shows that he himself has remarked and admitted in cross that, after perusal of the papers, it was revealed that accused no.1 had neither made any demand of gratification nor

accepted any gratification amount and as such, there was no evidence on record against accused no.1, and therefore, this witness proposed to reject the sanction. However, subsequently, his opinion has been referred to Law and Judiciary, which suggested directing to issue sanction. Consequently, there are two contrary opinion by Government side for according sanction. However, in view of answers given by PW1 Sable in cross, it is abundantly clear that there was no material to accord sanction to prosecute accused no.1, who was a public servant.

10. Therefore, in view of above discussion, case of prosecution was indeed weak, and therefore, learned trial Court rightly acquitted the accused by giving benefits of the same. With such quality of evidence, even this court feels that no fruitful purpose would be served by according leave. Hence, I proceed to pass the following order :-

ORDER

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

(ABHAY S. WAGHWASE, J.)