



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 8 OF 2026

The State of Maharashtra
Through Police Inspector,
Police Station Osmanpura,
Tq. & Dist.Aurangabad.

....Appellant

Versus

Shivaji Damu Gade
Age: 53 years, Occu.: Service,
R/o. Plot No.28, Old S.T.Colony,
Thakre Nagar, Mukundwadi,
Aurangabad.

.....Respondent
(Ori. Accused)

.....
APP for Applicant : Mr.VM.Jaware
Advocate for Respondent : Mr. Joydeep Chatterji

...

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 01 APRIL, 2026
PRONOUNCED ON : 06 APRIL, 2026**

ORDER :

1. By invoking Section 419(1)(b) of the Bharatiya Nagarik Suraksha Sanhita, 2023, State hereby seeks leave of this Court to question the judgment and order dated 13-01-2026 passed by learned Additional Sessions Judge-2, Aurangabad in Special (ACB) Case No.58 of 2021.

2. Learned APP pointed out that, vide above special case, present respondent, a Police Head Constable, posted at Osmanpura Police Station, was tried for commission of offence under Sections 7, 13(1) (d) read with 13(2) of the Prevention of Corruption Act, 1988. He elaborated that complaint was received from PW1 Salma Feroj Khan that her husband had pronounced oral "Tripal Talaq" in backdrop of some matrimonial dispute and therefore, she had approached Osmpanpura Police Station to lodge FIR against her husband. That, she had requested accused to file chargesheet at the earliest, but accused has allegedly demanded bribe of Rs.5,000/-. That, as complainant was not willing to pay bribe, she has approached Anti Corruption Bureau (ACB), who had taken further action.

3. Learned APP pointed out that, after due verification of demand, trap was laid. That, shadow pancha was made to accompany complainant to hear the conversation of demand. That, there is evidence of complainant as well as shadow pancha. Thus, aspects of demand and acceptance were proved. That, learned trial Court had held sanction to be valid. Resultantly, it is his submission that, when essential ingredients for attracting charges were very much available, learned trial Court ought to have convicted accused

by accepting prosecution case. According to him, there is perversity in the judgment of learned trial Court for failing to consider the evidence of shadow pancha witness. According to him, there is no challenge to aspect of acceptance of bribe amount. Therefore, according to him, prosecution has indeed a good case in appeal and therefore, he urges for leave.

4. Learned counsel for respondent justifies the acquittal by supporting the impugned judgment on the ground that there is no convincing case on behalf of prosecution. He also took this Court through answers given by witnesses in cross-examination and also observations of learned trial Court. He pointed out that, there was no convincing evidence of voice recorded conversation. That, infact it has come in the evidence of prosecution witness that complainant's brother was also posted in same Police Station with accused and they both had, since earlier point of time, some money transaction between them. That, the amount accepted by accused was towards the same. That, none other than complainant had accepted the same in the cross-examination. He further pointed out that, here, very motive of demand was under shadow of doubt because including complainant, Investigating Officer has admitted that chargesheet was

already filed prior to the demand verification exercise and for all above reasons, he justifies the order of acquittal and prays to refuse leave for want of merits.

5. After hearing above submissions and on going through the papers, it seems that prosecution was launched on allegations that present accused, who was working as Police Head Constable at Osmanpura Police Station, had allegedly demanded Rs.5,000/- for filing chargesheet against husband of complainant. It seems that on receipt of above complaint, PW3 Investigating Officer planned trap.

6. It seems that initially exercise of demand verification was undertaken and thereafter main trap was laid. As usual evidence of complainant being that of interested witness, there is necessity of corroboration from independent corner like shadow pancha both on the point of demand and acceptance. Therefore, evidence adduced on behalf of prosecution is visited.

PW1 Salma Feroj Khan, complainant seems to have deposed at exh.25 and **PW2** Shaikh Fayaj Abbas, shadow pancha seems to have been examined at exh.29.

On taking survey of **PW1** complainant's evidence, she seems to

have reiterated the contents of complaint that accused demanded Rs.5,000/- for filing chargesheet in the Court. She deposed about conversation being recorded in memory card, but it appears that while it was played in the Court, she was only in position to identify her own voice at the time of demand verification, but she declined to have voice conversation at the time of trap procedure.

Her **cross-examination** seems to have turned out fatal because she has candidly admitted that, at the time of demand verification itself chargesheet was already filed in the Court of law. She has also admitted that during her talks with accused, she *sue moto* seems to have introduced topic of payment of money i.e. prior to any demand by accused. Therefore, aspect of demand itself has come under shadow of doubt.

7. **PW2** Shadow Pancha witness in cross-examination seems to have admitted that, during the visit to the Police Station to meet the accused, there were talks between complainant and accused for a long time and at that time, accused informed about chargesheet being already filed. He also admitted that, accused did not make enquiry about him as he was standing at some distance. Such answer renders doubt about ability of this witness to hear the conversation

between complainant and accused. On the contrary, he has admitted that for the first time he heard from complainant about details of conversation while it were being narrated by complainant to PW3 Investigating Officer.

8. As pointed out, here, trial Court seems to have recorded a finding that there was no work pending and as such, there was no motive to put up demand. In the light of the same, judgment is put to scrutiny and it is noticed that, there is discussion to that extent in paragraph 23 to 26 of the judgment wherein judicial precedent has been discussed on the points of “motive” and “when no work was pending”. Here, as stated above, PW1 complainant as well as PW3 Investigating Officer have admitted that chargesheet was already filed in the Court of law. With such answers from crucial witnesses, indeed motive to put up demand is rendered suspicious.

9. Though, there is said to be recovery from accused, complainant seems to have admitted in cross-examination that her brother Javed was also posted in the same Police Station where accused was working and there were friendly relations between them and even money transactions used to take place between them. PW1

Complainant and PW2 shadow pancha have admitted that immediately after apprehension, accused has stated that the money received by him was towards the money transaction. Therefore, defence has also probalilized its case.

10. Resultantly, from the above discussion, here, before the trial Court, there was no convincing or legally acceptable evidence on the point of motive to put up demand. Answers given by none other than complainant while under cross-examination inflicted severe blow to prosecution story. Therefore, case of prosecution is not free from doubt. On the mere ground that there was testimony of PW2 shadow pancha on the point of demand, leave as prayed cannot be granted, more particularly, when initial demand itself has not been proved beyond reasonable doubt. For above reasons, leave as prayed cannot be granted. Hence, following order.

ORDER

(i) Leave is refused.

(ii) Application is rejected.

(ABHAY S. WAGHWASE)
JUDGE