IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3116 OF 2019

Anagha Pramod Ghawalkar ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Laxman P. Kanal, Advocate for the Applicant.
Smt. A. A. Takalkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 7th February, 2020

PC :

1. The applicant is seeking bail in connection with C.R. No. 155 of 2018 registered with Bibwewadi Police Station, Dist. Pune on 26th June, 2018, for offences punishable under Sections 74(1)(a), 74(1)(b), 74(2)(4)(5) of Maharashtra Value Added Tax Act, 2002 (for short 'VAT') and Section 409 and 420 of Indian Penal Code.

2. The prosecution case is that the applicant was proprietor of M/s. J.D. Enterprises. She had committed default in depositing Value Added Tax during the period from 1st April, 2016 and 30th March, 2009 to the tune of Rs.3,30,60,898/- and thereby cheated government. The complainant is a tax officer. On completing investigation, charge-sheet was filed.

3. Learned counsel for the applicant submitted that the applicant

is in custody since date of arrest. The applicant is house wife. The claim of the Tax officer is not supported by any evidence. The VAT was demanded for a period from 1st April, 2006 to 30th March, 2009. The demand notice was issued belatedly without any basis. The demand was not substantiated by any evidence. The business was closed. The offences under the Maharashtra Value Added Tax Act, at the most punishable with the imprisonment of one year. The offences under Sections 409 and 420 are not made out in this case.

4. Learned APP submitted that several notices were issued to the applicant. There was no response. There was huge outstanding of Value Added Tax which was collected by the applicant/accused. The audit mentions the arrears of the VAT. The applicant did not challenge the demand notice by preferring appropriate proceedings.

5. I have perused the documents on record, it is pertinent to note that the VAT was claimed for a period from 2006-2007, 2007-2008 and up to 31st March, 2009. The offence is triable by the magistrate. Investigation is completed and charge-sheet is filed. The applicant is a lady. It appears that business was closed down. It is apparent that the tax was not claimed immediately after the year of its collection. It is the contention of applicant that she did not receive any notice as the business was closed down. Before she could resort to remedy

available in law challenging the demand of the tax officer, she was arrested and is in custody. Returns were submitted from time to time for a financial year from 2006-2007, 2007-2008. Section 20(1)(b) of the Maharashtra Value Added Tax Act provides for examining return to ascertain whether It is complete and self consistent. If the return is not complete the commissioner may serve defect notice within four months of date of filing of return. The alleged notice of demand was given on 22nd June, 2013 and the penalty of Rs, 22,510/- for the year 2008-09 under Section 61(2) of Maharashtra Value Added Tax Act. However, subsequently, huge tax was claimed. The offence under Section 74 are punishable with maximum imprisonment of one year. The applicant is in custody since June, 2019. Further custody of the applicant is not warranted. Case for grant of bail is made out.

6. Hence, I pass the following order :

O R D E R

i) Bail Application No.3116 of 2019 is allowed;

ii) The applicant is directed to be released on bail in connection with C.R. No. 155 of 2018 registered with Bibwewadi Police Station, Dist. Pune on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount;

iii) The applicant shall report concerned police station once in a month on every first Saturday between 10.00 am. to 12.00 pm. till further order.

iv) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)