

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.1430 OF 2022

VIJAY MANIK SURVE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Mr. Irfan A. Shaikh for applicant.

Ms. A. A. Takalkar, APP for State.

Mr. Vaibhav Hari Nannaware, API, Turbhe MIDC Police Station, Navi Mumbai is present.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 2, 2023.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. This is an application for bail in respect of C.R. No.I-110 of 2021 registered with Turbhe MIDC Police Station for the offence punishable under Sections 354-A, 363 read with Section 34 of the Indian Penal Code, 1860 (hereafter "the IPC", for short). Later on the offence punishable under Sections 376(2)(I) of the IPC was added. The date of the FIR is 30/03/2021. The applicant was arrested on 31/03/2021.

3. The psychological evaluation of the victim (page No.75) mentioned that the victim suffered from mild subnormality of social finding and disability is mentioned as 50%. On clinical evaluation and psychological testing it is recorded that the victim suffers from "mild intellectual disability". The age of the victim is 25 years.

4. It is the case of the victim that at around 9.30 p.m., the applicant who was known to the victim took her to Turbhe Naka. Thereafter, the applicant left and the victim went along with the original accused No.2-Bhiva Baban Kshirsagar. The statement under Section 164 of the Code of Criminal Procedure, 1973 of the victim is recorded. In the statement, it is revealed that the accused No.2 raped the victim. In the medical examination report of the accused No.2, it is stated by him that he was earlier in a relationship with the victim. However, the history given by the accused No.2 as revealed from the medical record will not be relevant for considering the question of grant of bail to the present applicant. Suffice it to observe that as the matter stands, the allegation of rape are against the accused No.2.

The applicant is in custody since 31/03/2021 i.e. almost for a period of 1 year and 10 months. There is one antecedent reported against the applicant under Sections 498-A and 306 of the IPC which was an outcome of matrimonial discord. This should not weigh against the applicant according to me. Considering the role of the applicant and the fact that the applicant is in custody for more than 1 year and 10 months with the possibility of the trial concluding any time soon appearing to be distant, the applicant deserves to be released on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Vijay Manik Surve in connection with C.R. No.I-110 of 2021 registered with Turbhe MIDC Police Station, shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.
- (c) The applicant shall attend the concerned Police Station once in a month on every Monday of the first week between 11.00 a.m. and 1.00 p.m.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person

acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

- 5.** The Bail Application is disposed of.

(M. S. KARNIK, J.)