

Federal Court



Cour fédérale

Date: 20240910

Docket: IMM-12680-23

Citation: 2024 FC 1419

Ottawa, Ontario, September 10, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

JASWINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] At the conclusion of the Applicant's oral submissions, I indicated that this application would be dismissed, with short reasons to follow.

[2] The Applicant seeks to set aside a decision by a member of the Immigration Division of the Immigration and Refugee Board of Canada who issued a deportation order against the

Applicant on grounds of serious criminality under paragraph 36(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*].

[3] On November 22, 2017, the Applicant was convicted in Mohali, district of Punjab, India, of murder and attempt to murder. The Applicant concedes the conviction, but disputes its validity. According to court records from India, the Applicant's testimony that he was not at the crime scene was rejected and he was found guilty of firing a firearm at the victim.

[4] Besides arguing before the Member that the Applicant was not present at the scene and had been falsely implicated, Applicant's counsel invoked the Canadian defence of defence of person. The Member acknowledged these arguments but emphasized that her role was not to go behind the Indian judgment and retry the case.

[5] After reviewing the records from the Indian court, the Member was satisfied that the proceedings in India had proven that the Applicant fired shots at the victim and the vehicle behind which the victim hid. The Member found that these actions met the elements of an equivalent Canadian offence, and thus, the conviction by the court in India satisfied the criteria for serious criminality under paragraph 36(1)(b) of the *Act*.

[6] The Applicant submits that the Member unreasonably refused to consider the availability of the defence of person under Canadian law. The Applicant further submits that the Member's equivalency analysis was unreasonable because she failed to consider the Applicant's lack of criminal intent. The Applicant relies on a bail decision from the High Court of Punjab and Haryana, which granted him bail and noted that he caused no injury, to support his argument that

he lacked intent when firing the firearm. The Applicant finds that this omission from the Member's analysis is unreasonable, given that intent is a necessary element under the equivalent Canadian offence.

[7] I agree with the Respondent's submission that the Applicant's arguments regarding the Member's failure to consider defences are without support. The Applicant testified during the inadmissibility hearing that he was not at the crime scene, a defence raised and rejected during the proceedings in India. Moreover, this testimony is inconsistent with and undermines the defence of person which counsel raised during the hearing and on judicial review. I agree with the Respondent that the Member was under no obligation to consider these self-contradictory defences beyond the evidence that was available to her: *Gurbuz v Canada (Citizenship and Immigration)*, 2018 FC 684 at paras 28-30.

[8] No question was proposed for certification, and there is none on these facts.

JUDGMENT in IMM-12680-23

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12680-23

STYLE OF CAUSE: JASWINDER SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 9, 2024

JUDGMENT AND REASONS: ZINN J.

DATED: SEPTEMBER 10, 2024

APPEARANCES:

Lakhwinder Sandhu FOR THE APPLICANT

Teresa Ramnarine FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lakhwinder Sandhu Law Firm PC FOR THE APPLICANT
Barristers and Solicitors
Brampton, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario