

Federal Court



Cour fédérale

**Date: 20130523**

**Docket: IMM-7445-12**

**Citation: 2013 FC 535**

**Ottawa, Ontario, May 23, 2013**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**PINDERJIT SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA or the Act) of a decision made by the Refugee Protection Division of the Immigration and Refugee Board (the RPD), dated June 27, 2012, whereby it was decided that Pinderjit Singh (the Applicant) was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of the Act.

[2] For the reasons that follow, I have come to the conclusion that this application must be dismissed.

### **Facts**

[3] The Applicant is a 42 year-old Sikh farmer from a small Punjab village in India. The facts that he presented to the RPD are the following.

[4] The Applicant hired a Sikh man named Sukhdev Singh as a labourer in June 2006. Sukhdev was housed in a building on the farm. The Applicant informed his Sarpanch and the village watchman, as per custom, of the presence of Sukhdev Singh on the farm.

[5] On January 16, 2007, two rural-looking Sikh men visited Sukhdev Singh. The three of them left the farm together. On that same day, the police came looking for Sukhdev Singh and raided the Applicant's house. The police told the Applicant that Sukhdev was a wanted terrorist. The Applicant was taken into custody. The police questioned him on the whereabouts of Sukhdev Singh and accused him of harbouring a terrorist and being a militant himself. The Applicant was tortured for four days and released with the help of the Applicant's Panchayat and a bribe of 40 000 rupees. The Applicant was released upon the condition that he would produce Sukhdev Singh and his colleagues as soon as possible.

[6] On the evening of June 29, 2007, Sukhdev Singh showed up at the farmhouse. The Applicant tried to hold him down but Sukhdev threatened the Applicant with a pistol. Sukhdev left the farmhouse that same evening. Early the next day, the police once again raided the Applicant's

house and arrested him. Once again, the Applicant was tortured for four days. He was released with the help of his Sarpanch and a bribe of 50 000 rupees. He was released upon the condition that he must report to the police station every month and help with the arrest of Sukhdev Singh.

[7] Unable to satisfy police demands, the Applicant moved to Moleke in the district of Amristar, where he stayed for two months. The Applicant decided to flee India and arrived in Canada on September 20, 2007. The Applicant worked on a farm until late August 2009, in the hope of obtaining permanent resident status. During that time, although the Applicant received room and board, but no salary, \$12,000 was sent to his family in India.

[8] The Applicant left the farm in late August 2009. He arrived in Montreal on September 4, 2009 and claimed refugee status on September 8, 2009.

### **The impugned decision**

[9] The RPD found that the Applicant was not credible and that, in any case, he had a viable internal flight alternative (IFA) in New Delhi.

[10] With respect to credibility, the RPD took issue with a number of implausible elements in the Applicant's story:

- the police waited six months after Sukhdev Singh was hired before attending the Applicant's home;
- the Applicant's Sarpanch and the village watchman did not go to the police between the two arrests because of "lack of courage";

- the police nearly missed Sukhdev Singh on two occasions;
- the Applicant did not immediately go to the police station or contact someone on the night Sukhdev Singh returned to his farm.

[11] The RPD also took issue with the fact that the Applicant had not “directly answered” when asked why his Sarpanch and the village watchman had not explained to the police that he had informed them of Sukhdev Singh’s presence on the farm.

[12] The RPD noted that the Applicant’s story was not corroborated by general documentary evidence. The RPD referred to documents indicating that Sikh militant movements were no longer active in Punjab.

[13] The Applicant also submitted two affidavits in support of his allegations: one from the Sarpanch who helped with his release from police detention, and the other from his village’s current Sarpanch. The RPD did not address the content of these affidavits, because it did not find the Applicant credible and because of the prevalence of fraudulent documents in India.

[14] On the issue of the availability of an IFA, the RPD considered that even if it had believed the Applicant’s testimony, he would be safe in New Delhi. The RPD noted that the Applicant was not subject to an arrest warrant and that he was only wanted for having harboured a terrorist. The documentary information revealed that police would pursue in other regions only hard-core militants who are wanted by the central authorities, which is not the case of the Applicant.

## Issues

[15] This application for judicial review raises two issues:

- a) Are the RPD's credibility findings reasonable?
- b) Was it reasonable to conclude that the Applicant had an IFA in New Delhi?

## Analysis

[16] It is settled law that credibility and plausibility findings are to be reviewed against the reasonableness standard: see *Jerome v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1419 at para 6, [2011] FCJ No 1753; *Mirna Guadalupe Gomez Ramirez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 136 at para 12, [2010] FCJ No 150. However, plausibility findings may be more easily overturned than credibility findings based on behaviour or contradicting testimony.

[17] The reasonableness standard also applies to the conclusion that the Applicant had an IFA in New Delhi: *Marthandan v Canada (Minister of Citizenship and Immigration)*, 2012 FC 628 at para 14, [2012] FCJ No 624; *Khokhar v Canada (Minister of Citizenship and Immigration)*, 2008 FC 449 at paras 21-22, 166 ACWS (3d) 1123.

[18] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190.

a) Are the RPD's credibility findings reasonable?

[19] Counsel for the Applicant submitted that the RPD's credibility findings are flawed for a number of reasons. First he argued that there is no supporting evidence as to what information the police had and when it was obtained with respect to Sukhdev Singh, and that the RPD therefore had no basis to conclude that he was wanted by the police before the police raided the Applicant's house for the first time. Second, contrary to the RPD's finding that the Applicant did not respond directly when asked if the Sarpanch and the village watchman had told the police that he had informed them of Sukhdev Singh's presence, counsel asserted that the Applicant testified that he did inform the police at the time of his first arrest that he had reported Sukhdev Singh once he had started living on his property, and that the Sarpanch and the watchman had indeed gone to the police and informed them about the Applicant's registration of Sukhdev Singh back in June 2006. Finally, it is contended that the RPD failed to consider the Applicant's reasons for not having gone to the police immediately after Sukhdev Singh returned to his farm.

[20] Having carefully considered the record and the submissions of the parties, I am unable to find that the RPD's conclusions are unreasonable. While some inferences drawn by the Board may appear questionable, there were enough implausibilities in the Applicant's story to put his credibility at issue. First, if the police were told that Sukhdev was living with the Applicant since June of 2006, it is extremely unlikely that the evening Sukhdev left the house would be the same evening that the police decided to visit.

[21] The Applicant's explanation that Sukhdev was not of interest to the police until he was visited by two men is also unsatisfactory. Contrary to what the Applicant now claims, he claimed in

his Personal Information Form (PIF) that the police told him that Sukhdev was a terrorist, not simply a suspect. If the police knew that Sukhdev was a terrorist, their file was not limited to informer reports indicating that he had left the house in the company of the two strangers. Furthermore, the Applicant's speculation that Sukhdev only became known to the police on January 16, 2007 is contradicted by the allegation that Sukhdev was being sought because he had been evading arrest. Given the evidence in the Applicant's PIF, it was reasonable to conclude that the police must have been interested in Sukhdev before January 16<sup>th</sup>. It is therefore illogical to claim that the police would have waited until their informers told them that Sukhdev had left the farmhouse before trying to arrest him there.

[22] It is not entirely clear from the transcript of the hearing whether, following the Applicant's first arrest, the Sarpanch and the village watchman told the police that the Applicant had informed them of Sukhdev Singh's presence. It appears that the Sarpanch and the watchman, when asked by the Applicant after his first release, told him that they had gone to the police and told them of Sukhdev Singh's presence but were afraid to go back and reiterate that they were informed by the Applicant. Yet this is an illogical explanation. It is implausible that the Sarpanch and the watchman would feel comfortable arranging his release with a bribe, but would be too afraid to go to the police to confirm that the Applicant had informed them of Sukhdev Singh's presence at the first opportunity after his release.

[23] The RPD considered the explanation given by the Applicant for not going immediately to the police after Sukhdev came back on the night of June 29, 2007. The Applicant testified that he had been threatened with a pistol by Sukhdev Singh. The Board found, however, that having

allegedly been tortured for four days and released on the promise to produce Sukhdev Singh, it would be expected that he would have tried as soon as possible to contact someone who would let the authorities know.

[24] The Applicant does not contest the Board's conclusion, but offered a new explanation before the Court, to the effect that he was afraid of contacting the police because his house was under police surveillance. That explanation does not make sense either, as this would simply make it easier for him to inform the police of Sukhdev's visit and more importantly, to demonstrate to the police without delay that he was willing to assist them.

[25] The Applicant also submitted that the Board erred in failing to consider the two corroborating affidavits from the current Sarpanch of his village and from the Sarpanch at the relevant times, which both corroborate the Applicant's story and support the Applicant's allegations of persecution.

[26] I agree with the Applicant that the way the two affidavits were handled by the RPD is somewhat problematic. First of all, the fact that inauthentic documents are easily available in India does not relieve the RPD of the duty to determine whether the documents presented by the Applicant are genuine or not: *Lin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 157 at paras 53-54, 405 FTR 21. Moreover, it is inappropriate to rely on these documents for some purposes and to dismiss them when they would tend to corroborate the Applicant's story. That being said, I note that the two affidavits are identical for all material purposes, which would tend to undermine their genuineness. In and of themselves, they are certainly not sufficient to bolster the



Applicant's case and to cure the many implausibilities of his story. When considered in light of the documentary evidence referred to by the Board, indicating that there were no reports of Sikh arrests or detention in the period in which the Applicant alleges he was detained, it cannot be said that the RPD's treatment of the affidavits is fatal to its decision.

[27] For all of the above reasons, I am of the view that the RPD's assessment of the Applicant's credibility is reasonable and "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

b) Was it reasonable to conclude that the Applicant had an IFA in New Delhi?

[28] Counsel for the Applicant submitted that the RPD erred in framing the risk that the Applicant faces in India. The Applicant maintains that he has a well-founded fear of persecution from the Indian authorities because he was alleged to be associated with dangerous militants, possessed information on these militants and failed to respect the conditions of his release. In his view, the Board failed to appreciate that he was in fact wanted not because he was a militant, but because he was suspected of collaborating with militants. In other words, the Board failed to assess his profile through the eyes of his agents of persecution, the Punjab police, and erroneously came to the conclusion that he could not have a well-founded fear of persecution since he was not a militant. Such a misperception led the Board to conclude that the Applicant would have an IFA in New Delhi.

[29] I agree with the Applicant that the persecutor's point of view must be taken into account when assessing the risk a refugee claimant would be exposed to upon removal. That being said, I do

not think that the Board failed to properly evaluate the real cause of the Applicant's fear. The Applicant was never alleged to be a hard-core militant or even a dissident. He was apparently mistreated because he was perceived to be a possible associate of the militant Sukhdev, to have harboured him and to have not cooperated with the police.

[30] The real disagreement of the Applicant with the RPD has to do with the RPD's finding that the Punjab police are unlikely to pursue a Sikh outside of Punjab unless they are one of a handful of hard-core militants. Although there is some evidence in the National Documentation Package suggesting that no IFA is available to Sikhs, the Board noted that this evidence was based primarily on events in the 1990s. The Board was entitled to prefer more recent information, indicating that when an applicant has alleged problems only with the local police, an IFA is possible. Sukhdev himself may or may not be perceived as a sufficiently important target to justify a pursuit outside of Punjab, however, there is no evidence to indicate that the Applicant is the sort of person the Punjab police would waste resources pursuing in other states. The authority's lack of interest in the Applicant is further demonstrated by the absence of any warrant for his arrest.

[31] The profile of the Applicant was most certainly a relevant factor to determine whether he could safely relocate within India. It was incumbent upon the Applicant to establish that he would be pursued throughout India, or that registration in a different state would place him in harm's way. Having failed to do so, the Board could reasonably conclude that the Applicant would be safe if he relocated to New Delhi. This conclusion, in and of itself, was sufficient to warrant the rejection of the Applicant's claim.

**Conclusion**

[32] For all of the above reasons, I find that this application for judicial review ought to be dismissed. No question for certification was proposed, and none will be certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

No question is certified.

"Yves de Montigny"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-7445-12

**STYLE OF CAUSE:** PINDERJIT SINGH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** February 28, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** de MONTIGNY J.

**DATED:** May 23, 2013

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