

CANADA / JUDGMENT

R. v. Garcha

2025 ONCA 816

COURT

Court of Appeal for Ontario

DECIDED

26 November 2025

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R. v. Garcha Collection Decisions of the Court of Appeal Date 2025-11-26 Neutral citation 2025 ONCA 816 Docket numbers COA-25-CR-1461, M56465 Judges Paciocco, David M. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Garcha, 2025 ONCA 816 DATE: 20251126 DOCKET: M56465 (COA-25-CR-1461) Paciocco J.A. (Motion Judge) BETWEEN His Majesty the King Respondent/Respondent and Balwinder Garcha Appellant/Applicant Howard Krongold, for the applicant Emily Bala, for the respondent Heard and rendered orally: November 25, 2025 REASONS FOR DECISION

- [1] Balwinder Garcha, now 69 years of age, was convicted of historical sexual offences against his daughter found to have occurred between 1994 and 1998. The offences he was found by a jury on May 30, 2025, to have committed are extremely serious, as reflected by the eight-year sentence the trial judge imposed.
- [2] Mr. Garcha seeks bail pending appeal. The Crown acknowledges that Mr. Garcha would attend court if released. The Crown takes the position that Mr. Garcha has not established on a balance of probabilities that his detention is not necessary in the public interest, as required before his application for release pending appeal can be granted: *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250, at paras. 19-22. The Crown argues that he has not shown that the reviewability interest outweighs the enforceability interest as his appeal barely meets the non-frivolous standard, involves extremely serious offences and a lengthy sentence, and there is a residual public safety concern given that Mr. Garcha faces two outstanding charges of having breached a non-contact condition of his bail in December 2021 and April 2022.
- [3] I agree that the charges for which Mr. Garcha was convicted are extremely serious and that this and his lengthy sentence promote the enforceability interest. However, I do not agree that the primary ground of appeal barely meets the non-frivolous standard. In my view there is a serious issue to be tried as to whether the trial judge exercised his exclusionary discretion properly in deciding to exclude evidence the defence wished to present because of concern that the evidence, which the trial judge recognized to be relevant, could unduly prejudice the accused.

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- [4] I am also persuaded that while relevant to my decision, the foundation for the breach allegations is problematic enough to materially reduce the weight the breach allegations should be given.
- [5] Mr. Garcha, an elderly man with health problems, has a long history of complying with his terms of release including pending a first trial, pending his successful appeal of that first trial result, pending his retrial, and pending sentence. There have been no new breach allegations for the past four years, since those two breach allegations were made. In my view, an informed member of the public in these circumstances would not conclude that his release pending appeal on the bail plan contingently agreed to by the parties would damage the repute of the administration of justice thereby undermining confidence in the administration of justice. Mr. Garcha has met his onus.
- [6] The application for release pending appeal is allowed. The order for release pending appeal agreed to by the parties is to issue. “David M. Paciocco J.A.”
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