

CANADA / JUDGMENT

R. v. Khojsteh Kashani

2025 BCCA 454

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 454 R. v. Khojsteh Kashani

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Khojsteh Kashani,

2025 BCCA 454

Date: 20251128

Docket: CA51004

Between:

Rex

Respondent

And

Farshad Khojsteh Kashani

Appellant

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Before:

The Honourable Justice Griffin

(In Chambers)

On appeal from: Orders of the Supreme Court of British Columbia, dated
April 2, 2025 (conviction) and September 16, 2025 (sentence)

(R. v. Khojsteh Kashani, Vancouver Docket 34406-1).

Oral Reasons for Judgment

Counsel for the Appellant:

J. Whysall

K. Behnampour

Counsel for the Respondent:

J.R.W. Caldwell

Place and Date of Hearing:

Vancouver, British Columbia

November 28, 2025

Place and Date of Judgment:

Vancouver, British Columbia

November 28, 2025

Summary:

The appellant was convicted of seven counts of sexual assault of clients of his medical aesthetics business and sentenced to 11 years' imprisonment. He seeks bail pending his appeal from conviction and sentence, which the Crown opposes. Held: Bail granted, on terms. The appellant complied with bail conditions pending trial and does not pose a current safety risk to the public. His appeal meets the merits threshold. The largest concern in this case appears to be the appellant's connections to Iran and the concern that he might flee. However, the appellant has proposed significant conditions which the Court accepts mitigate against this risk.

GRIFFIN J.A.:

Nature of the Application

- [1] The appellant, Farshad Khojsteh Kashani, seeks his release from custody pursuant to s. 679 of the Criminal Code, R.S.C. 1985, c. C-46, pending the determination of his appeal against conviction and sentence. The appellant was found guilty of seven counts of sexual assault in relation to seven different victims, all of whom were clients at his medical aesthetics business. He received an aggregate sentence of 11 years.

Background

- [2] The appellant was born in Iran and is 51 years old. He studied medicine in Iran and worked as a general practitioner there for around four years. At around age 37, in 2011, the appellant came to Canada with his wife. He became a Canadian citizen in 2017. After failing to meet the English language proficiency required to practice medicine in BC, the appellant trained in aesthetics procedures and opened a medical aesthetics business, which he operated between 2017 and 2022.
- [3] In May 2019, a client of the medical aesthetics business reported to the police that the appellant had sexually assaulted her during a procedure. Two years later, another client made a similar report. Following a news release issued by the police and subsequent media coverage, five other complainants came forward with similar allegations. The appellant was charged with seven counts of sexual assault.
- [4] The appellant elected to be tried by judge and jury. On April 2, 2025, the jury found the appellant guilty of all seven counts of sexual assault contrary to s. 271 of the Criminal Code.
- [5] The complainants testified at trial that the appellant touched them in an inappropriate sexual manner while performing a non-surgical vaginal procedure. One complainant also described sexual touching that occurred during a microneedling procedure that the appellant performed on her vaginal area.
- [6] The offences were highly invasive. In some cases, the offences involved: vaginal penetration using a medical instrument, which the appellant thrust aggressively to varying degrees; digital penetration; touching of the vulva and/or clitoral area; and the infliction of physical pain. There were hallmarks of planning, as four of the complainants went to the clinic initially for other treatments and the appellant encouraged them towards this procedure.
- [7] The appellant denied the allegations of sexual assault but conceded that the touching described by the complainants, had it occurred, would have been inappropriate and sexual in nature.
- [8] After the complainants testified, the Crown applied for and was granted a cross-count similar fact evidence application. The trial judge found that the jury was entitled to rely on the similar fact evidence for the purpose of deciding what touching occurred in relation to each complainant, which would require an assessment of the credibility of each complainant's allegations of sexual touching.

Sentencing

- [9] The appellant was sentenced on September 16, 2025, to 11 years of imprisonment. The sentencing judge noted that the appellant had no prior criminal record, had generally led a productive life, and was at a low risk of reoffending. However, given the gravity of the offences, the sentencing judge found that the objectives of denunciation and deterrence were paramount and necessitated a substantial penitentiary term.
- [10] The sentencing judge identified several aggravating circumstances, including that the appellant was in a position of trust and that the assaults were physically invasive and prolonged. The sentencing judge also found that the appellant's moral blameworthiness was substantial, as the offences constituted a breach of trust and required a high level of intentionality.

Legal Framework

- [11] The appellant has appealed both his conviction and sentence. In such a case, the Court may grant interim release based on either appeal: *R. v. Porisky*, 2012 BCCA 309 at para. 6 (Chambers).
- [12] The criteria for bail pending an appeal are set out in s. 679(3) of the Criminal Code. A judge may order that the applicant be released if the applicant establishes that:
- a) the appeal is not frivolous;
 - b) the applicant will surrender himself into custody in accordance with the terms of the order; and
 - c) the applicant's detention is not necessary in the public interest.
- [13] The applicant seeking bail bears the burden of establishing that each criterion is met on a balance of probabilities: *R. v. Oland*, 2017 SCC 17 at para. 19 [Oland].
- [14] The question of whether an appeal is "not frivolous" is widely recognized as being "a very low bar": Oland at para. 20. The second criterion requires the Court to be satisfied that the applicant will not flee the jurisdiction and will surrender into custody as required: Oland at para. 21. The third criterion has two components: public safety and public confidence in the administration of justice: Oland at para. 23.

Positions of the Parties

- [15] In support of his application, the appellant has filed his own affidavit, two affidavits provided by his wife, and written submissions.
- [16] First, the appellant submits that he should be granted bail because his appeal is not frivolous. In his written submissions, he advances three grounds of appeal:
- a) The trial judge erred in granting the Crown's cross-count similar fact application.

- b) The jury's verdict on five counts was unreasonable because the appellant's testimony on those counts was not inherently implausible.
 - c) The sentencing judge erred in principle by failing to give sufficient weight to the appellant's status as a first-time offender.
- [17] The appellant also says that he should be granted bail because he has demonstrated that he will surrender himself into custody when required. He says that he has no intention of leaving the jurisdiction. He also contends that his detention is not necessary in the public interest, and that any concerns about public safety can be addressed through the imposition of strict conditions.
- [18] The Crown opposes the appellant's release. The Crown submits that the appellant poses a significant flight risk. Given the weak grounds of appeal, the Crown also says that the appellant's release would compromise public confidence in the administration of justice.

Analysis

Is the Appeal "Not Frivolous"?

- [19] The Crown contends that the appellant's grounds of appeal are weak but concedes as a whole that they are not frivolous. The "not frivolous" test is widely recognized as being a very low threshold: Oland at para. 20. I agree that the appellant has met this threshold. At this stage, he is not required to establish a likelihood of success on appeal. Rather, he must simply show that the appeal is not doomed to fail, not devoid of merit, or is capable of being supported by reasoned argument: R. v. Cashman, 2023 BCCA 48 at para. 14 (Chambers) [Cashman].
- [20] It appears to me that the unreasonable verdict ground of appeal will be difficult to make out. The ground of appeal regarding the use of similar fact evidence is a more complex ground. Some of the appellant's arguments ask for reconsideration of the approach laid out in well-established authority and applied by the judge. Further, the judge warned the jury about the dangers of misuse of evidence of multiple counts and the limited use of similar fact evidence. I cannot say this ground of appeal is strong, but nor can I say that it is weak. It will remain to be developed.
- [21] Given the numerous counts and very serious offences, the appellant will continue to face a lengthy custodial sentence if unsuccessful on his conviction appeal. This is not a case where there is a risk his sentence will be substantially served by the time his appeal is heard. Counsel for the appellant was advised by the Court of Appeal Registry that in accordance with a criminal practice directive, it is expected that this appeal must be heard before September 23, 2026.

Will the Appellant Surrender Himself into Custody?

- [22] The appellant must establish that he will not flee the jurisdiction and will surrender himself into custody as required. The Crown challenges that he has met this condition.
- [23] That is because this is a case dealing with the unusual circumstance where the appellant has ties with another country, Iran, where he grew up and obtained professional qualifications as a doctor. His wife has similar ties. He appears to still have family and friends there.
- [24] In order to assure the Court that there is no danger that the appellant would flee the jurisdiction if released, pending appeal, the appellant's wife has provided affidavit evidence. The Crown submits she is not credible because she gave evidence that she and the appellant are afraid to travel to Iran ever since the downing of the Ukrainian flight which was shot down by Iranian missiles in January 2020. She says because they lost friends it "deeply strengthened our fear of travelling to Iran and our determination never to do so".
- [25] Yet a different impression was left by the appellant's evidence at trial. At trial, the appellant testified about how upset he was about the media publication regarding his charges, that it was publicized in the renowned Iranian newspapers, and every friend of his was aware of it. He added that his mother died afterwards, and that he was unable to attend his mother's funeral in Iran because his passport had been seized. This was after the downed flight. The tenor of his evidence suggests he would travel to Iran in certain circumstances and is not afraid to do so, which undermines his wife's evidence.
- [26] On the other hand, the evidence he gave at trial about his connection to Iran cuts both ways. He was clearly upset about the damage to his reputation that these charges pose, including in Iran. This suggests that he is, as his counsel submits, more interested in clearing his name by proceeding with the appeal than in becoming an international fugitive.
- [27] The appellant says that his past conduct while on bail indicates that he will comply with the requirements of his bail conditions and will not attempt to flee the jurisdiction. During the three years preceding his convictions, the appellant was on a release order that required him to surrender his Canadian and Iranian passports to the police. In 2022, the appellant successfully applied to have his Canadian passport returned to him to allow him to take a short trip to Dubai. Per his release order, the appellant surrendered the passport to the police upon his return to Canada.
- [28] Previous compliance with bail conditions is a relevant consideration: *Cashman* at para. 17. However, the appellant's situation has changed dramatically since his pre-trial release.
- [29] This was noted by the trial judge after conviction, in refusing to grant bail to the appellant between the time of conviction and sentencing: bail reasons indexed at 2025 BCSC 1993. The judge was aware of all the facts now before this Court regarding his past compliance with bail and had also seen him testify. Before the trial judge, his wife was willing to offer security of \$250,000. However, the judge was still concerned about the prospect of the appellant fleeing and so did not grant bail.

- [30] The Crown submits that the incentive for the appellant to flee the jurisdiction is even higher than it was before sentencing, as the prospect of a lengthy jail sentence has been confirmed and one complainant has since filed a notice of civil claim.
- [31] The appellant has tried to address these concerns. First, the appellant's counsel submits that he has already put money aside to pay for the transcripts for appeal and has clearly retained counsel to advance the appeal.
- [32] The evidence of the appellant and his wife is that they are both prepared to surrender all passports, Canadian and Iranian, and expired passports. The appellant's wife says that while one can apply online for an Iranian passport, an original birth certificate is necessary to complete the process. The appellant is also willing to surrender his birth certificate.
- [33] The appellant has proposed strict terms of bail to mitigate against fears that he might flee. These terms include 24-hour house arrest and submission to electronic monitoring.
- [34] The evidence and authorities establish that electronic monitoring does not necessarily preclude one fleeing. It needs cell service to work. The evidence is that there are some gaps in cell connection inside the appellant's residence. In addition, there can be a 2.5-hour gap between a breach and notice of the breach.
- [35] Nevertheless, the measures he is willing to undertake all show the seriousness of the appellant's commitment to appear on the appeal.
- [36] As further reassurance, the appellant's wife is willing to act as surety, to provide a cash deposit of \$150,000, and to provide the security of their condominium residence located in Coquitlam.
- [37] Weighing all of this, I am satisfied that the risk of the appellant fleeing the jurisdiction can be mitigated by the additional measures proposed by the appellant. I am satisfied that he has established that he will surrender himself.

Is Detention Necessary in the Public Interest?

- [38] The public interest criterion has two components: (1) public safety; and (2) public confidence in the administration of justice.
- [39] The Crown concedes that public safety would not be endangered by the appellant's release. The sentencing judge was satisfied that the appellant has good rehabilitation prospects and that his risk of reoffending is low. I agree that public safety concerns can be mitigated with the imposition of strict conditions. The appellant has no prior criminal record and the offences occurred in a clinical setting. Bail conditions could be imposed to ensure that the appellant is not placed in that setting again. The appellant's wife has also expressed her willingness to act as a surety and to ensure that the appellant follows any conditions of a release order.

[40] I am satisfied that the appellant's release would not undermine public confidence in the administration of justice. This assessment involves the weighing of two competing interests: the enforceability of judgments and the need for a meaningful review process.

[41] The offences here were very serious, but the appeal is not without merit. Having satisfied myself that the appellant will surrender, I am not persuaded that detention is in the public interest. I am mindful of the comments in *R. v. Robson*, 2025 ONCA 497 at para. 15:

Ultimately, as Moldaver J. made clear in *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250, at para. 29, detaining individuals who are apt to attend court and who are not likely to commit offences pending appeal is an exceptional outcome. It is only in rare cases that individuals who will attend court if released, and who do not pose a serious risk to the public, should remain in detention pending appeal when they have real arguments to make before it can be finally resolved whether their punishment is appropriate. Ultimately, the damage that release pending appeal could cause to the repute of the administration of justice is to be judged through the eyes of reasonable people, fully informed of the circumstances and who are familiar with the relevant principles of justice, including those principles that have been adopted to protect the community at large from unjustified harm from the mistaken, disproportionate, or unfair use of the criminal law power.

[42] I have concluded that this is not the kind of exceptional case where detention is necessary to protect the repute of the administration of justice.

Disposition

[43] In the result, I am satisfied that the appellant should be granted interim release pending the appeal, on conditions.

[44] The conditions imposed will include standard conditions, as well as many of those that were imposed in the trial court pending the trial. In addition, the conditions will include those offered by the appellant as mitigation of the risk that he will flee. These additional terms include:

- a) The appellant's wife will post a cash deposit of \$150,000.
- b) The appellant and his wife will grant security over the family residence, their Coquitlam condominium.
- c) The appellant and his wife shall each surrender all passports and travel documents, from whatever country of origin, including current and expired passports and documents in their possession. The appellant will be prohibited from applying for new travel documents or passports.
- d) The appellant will surrender his original birth certificate.
- e) The appellant will be under house arrest inside his residence.
- f) The appellant will be subject to electronic monitoring.

- [45] The conditions will include a term that the appellant surrender himself into custody on the compliance date set by this Court, which is April 14, 2026, unless the appellant has filed his factum and the appeal has been set down for hearing.
- [46] As a last term, I am going to order that the appellant surrender himself at the date set for hearing of the appeal. The appellant's risk of fleeing may increase after the hearing of the appeal if there is a perception that the Court did not give a warm reception to his arguments. For that reason, I consider it advisable to have the division hearing his appeal decide if further interim release is warranted, pending any reserve judgment.
- [47] I am currently not satisfied that the precise language proposed by counsel in the terms of release captures the intent of these reasons, and so I am going to order that this bail hearing continue on December 2, 2025, so that counsel can work on the appropriate wording.

"The Honourable Justice Griffin"

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