

CANADA / JUDGMENT

R. v. Singh

2021 BCSC 1492

COURT

Supreme Court of British Columbia

DECIDED

16 July 2021

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2021 BCSC 1492 R. v. Singh IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Singh, 2021 BCSC 1492 Date: 20210716 Docket: 31997-1-W Registry: Vancouver Regina v. Harjinder Singh Before: The Honourable Mr. Justice Ball Oral Reasons for Judgment Re: Application for Bail Review under s. 525 of the Criminal Code Counsel for the Crown: N.M.D. Reithmeier Counsel for the Defence appearing via teleconference: S. Grewal Place and Date of Hearing: New Westminster, B.C. July 16, 2021 Place and Date of Judgment: New Westminster, B.C. July 16, 2021

- [1] THE COURT: In this case, Mr. Singh applies for release on bail. The application was brought on his behalf by Corrections under s. 525 of the Criminal Code, R.S.C. 1985, c. C-46 [Code], which reads as follows: 525 (1) The person having the custody of an accused -- who has been charged with an offence other than an offence listed in section 469, who is being detained in custody pending their trial for that offence and who is not required to be detained in custody in respect of any other matter -- shall apply to a judge having jurisdiction in the place in which the accused is in custody to fix a date for a hearing to determine whether or not the accused should be released from custody, if the trial has not commenced within 90 days from
- (a) the day on which the accused was taken before a justice under section 503; or
- (b) in the case where an order that the accused be detained in custody has been made under section 521, paragraph 523.1(3)(b)(ii) or section 524, or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision. The person shall make the application immediately after the expiry of those 90 days.
- [2] As noted above, s. 525 applies to an accused where a person is detained in custody pending their trial and "who is not required to be detained in custody in respect of any other matter". That clause serves as a mandatory requirement to support an application by an accused for a bail review within 90 days.

- [3] Counsel were agreed that Mr. Singh is subject to a departure order and warrant for arrest under the provisions of the Immigration and Refugee Protection Act, S.C. 2001, c. 27 [IRPA], which provide for his detention on other matters, in addition to that under the current detention order.
- [4] This specific issue has been canvassed in cases such as *R. v. Walsh*, 2021 BCSC 261 ("Walsh"), where the decisions in *R. v. Myers*, 2019 SCC 18 ("Myers"), *R. v. Antic*, 2017 SCC 27 and *R. v. Zora*, 2020 SCC 14 were also discussed. The Court in Walsh concluded that, in circumstances where the accused was held on a current detention order and a detention order in another proceeding, the Court had no jurisdiction to entertain an application under s. 525. The same issue was also the subject of the decision of Madam Justice Devlin in *R. v. Sihata*, 2020 BCSC 761 ("Sihata"), where the Court noted that "[a]s discussed in Myers, detention can occur in several circumstances. Detention is not restricted to a detention order made under s. 515. Myers does not distinguish detention based on the mode by which an accused is detained." The accused in Sihata had been charged in other criminal proceedings. The Court found there was no jurisdiction to hear a s. 525 application in those circumstances.
- [5] Following the cited cases, and the broad wording of s. 525 of the Code, a detention in any other matter would, on the facts of this case, include a departure order and warrant for arrest under IRPA and its regulations.
- [6] Clearly, a bail order by this court under s. 525 today would not result in the release of this accused, as detention would still be required under IRPA. Moreover, while there may be other proceedings under IRPA as Ms. Grewal notes, the detention would currently remain. At this point in time, there is no guarantee of release under IRPA.
- [7] In these circumstances, this is a case where Mr. Harjinder Singh is not eligible for an order under s. 525 of the Code. This Court has no jurisdiction to hear the application under s. 525. The present application is dismissed. "Ball J."

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