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RAD File / Dossier de la SAR : TC5-00082

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Person who is the subject of the appeal	XXXX XXXX	**Personne en cause**
Date of decision	May 30, 2025	**Date de la décision**
Panel	Annie Song	**Tribunal**
Counsel for the person who is the subject of the appeal	Laurent Gryner	**Conseil de la personne en cause**
Designated representative	N/A	**Représentant(e) désigné(e)**
Counsel for the Minister	N/A	**Conseil du ministre**

REASONS FOR DECISION

OVERVIEW

[1] The Appellant, **XXXX XXXX**, is a citizen of India. He is from a Hindu family and entered into a relationship with K, who is from a Sikh family. He fears being harmed or killed by K's family, the police, and the *Bharatiya Janata Party* (BJP) due to their inter-caste relationship. He also fears that he will be harmed by the BJP due to his support for the farmers protests.

[2] The Refugee Protection Division refused the Appellant's claim because it found that he had an Internal Flight Alternative (IFA) in XXXX XXXX, XXXX, XXXX, and XXXX. The Appellant argues that the RPD erred in its assessment of his credibility as well as its IFA analysis. The determinative issue for the Refugee Appeal Division (RAD) is whether the Appellant can safely relocate to the proposed IFAs.

DECISION

[3] I dismiss the appeal. The RPD was correct in finding that the Appellant is neither a Convention refugee nor a person in need of protection.

NEW EVIDENCE

[4] The Appellant has submitted the following new evidence on appeal:

a. Affidavit of the Appellant's uncle, dated January 28, 2025 (A-1);
b. Affidavit of the village Sarpanch, dated January 28, 2025 (A-2);
c. Affidavit of Appellant's father, dated January 28, 2025 (A-3);
d. Affidavit of Appellant's mother, dated January 28, 2025 (A-4);
e. Photographs of Appellant and K, with K's Aadhar card, undated (A-5); and
f. Text message exchanges with K, dated October 29, 2022 (A-6).

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The evidence presented by the Appellant is accepted, in part

[5] According to the *Law*,[1] I can only accept evidence that:

(i) arose after the RPD decision; or

(ii) was not reasonably available at the time of the decision; or

(iii) that you could not reasonably have been expected in the circumstances to bring to the RPD before the decision.

[6] If the evidence meets one or more of these requirements, I must decide if the evidence is new, credible, and relevant before I can accept it.[2] It is the Appellant's burden to provide full and detailed submissions on the admissibility of the evidence.[3]

[7] The Appellant submits that the new evidence responds to the admissibility criteria as it relates to events that go to the heart of the claim that occurred following the RPD hearing. He argues that they corroborate his credibility and requests a hearing on this basis.

[8] I accept A-1, A-2, A-3, and A-4, in part. They are prima facie credible, as they are all signed, dated, and attested to by a notary. Although they all post-date the RPD decision, most of their content concerns events that pre-date the decision. Accordingly, I only accept the content from the affidavits relating to events from XXXX of 2024. These allegations are relevant to the determinative issue of whether the Appellant can safely live in the proposed IFAs.

[9] I cannot accept the photographs (A-5) into evidence. As they are undated, I cannot ascertain whether they were taken after the RPD decision. The Appellant has not returned to India since his claim was filed, therefore they were likely available prior to the RPD decision. If they were not available prior to the decision, the onus is on the Appellant to explain why. In the absence of any submissions to this effect, they are not admissible.

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[1] *Immigration and Refugee Protection Act* (IRPA), S.C. 2001, c. 27, as amended, subsection 110(4).
[2] *Singh v. Canada (Citizenship and Immigration)*, 2016 FCA 96; *Raza v. Canada (Citizenship and Immigration)*, 2007 FCA 385.
[3] *Pajarillo v. Canada (Citizenship and Immigration)*, 2019 FC 1654.

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[10] I cannot accept the text messages (A-6) into evidence. They are not in English or in French, nor are they accompanied by translations. They are also not prima facie credible, as the date "October 29, 2022" was placed over other text in what appears to be an attempt to doctor the screenshots.

[11] As the new evidence admitted does not raise serious questions relevant to the Appellant's credibility, I cannot hold a hearing in this matter.

ANALYSIS

My role is to look at all the evidence, including a recording of the hearing, and decide if the RPD made the correct decision.[4]

Credibility

Threats were not tied to the farmer's protests

[12] I agree with the RPD's uncontested conclusion that the Appellant was not targeted due to his participation in the farmer's protests. The Appellant was unable to reasonably explain why his BOC omitted significant aspects of this allegation, which he mentioned for the first time in the hearing. Furthermore, there is nothing in the Appellant's documentary evidence to establish that the agents of persecution were even aware of his participation in the farmer's protests, such that he would be targeted on this basis. Accordingly, the remainder of my analysis will focus on the events stemming from the Appellant's relationship with K.

The Appellant has not established key allegations regarding his claim

[13] The RPD was correct to find that there was insufficient credible and reliable evidence to support the Appellant's allegations with respect to key events stemming from his relationship with K. The most salient are as follows:

a. In XXXX of 2022, He was introduced to K through his friend Am. At the time, Am was dating Ak, who was K's cousin;

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[4] *Huruglica v. Canada (Citizenship and Immigration)*, 2016 FCA 93; *Rozas del Solar v. Canada (Citizenship and Immigration)*, 2018 FC 1145.

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b. In XXXX of 2022, K's father learned of their relationship through his connections with BJP goons;

c. In XXXX of 2023, the Appellant was detained under false allegations of attempting to kidnap K;

d. In XXXX of 2023, the Appellant and Am were beaten by goons and BJP members. Tragically, Am passed away due to his injuries. The Appellant filed a police complaint against K's father, the BJP members, and the goons due to Am's death; and

e. In XXXX of 2023, the Appellant was arrested a second time. The police pressured him to withdraw his complaint or else face false charges.

[14] Notwithstanding the Appellant's argument that he testified spontaneously and credibly, without hesitation or inconsistencies, the presumption of truthfulness does not obviate the Appellant's burden to provide sufficient evidence to support the key elements of his claim.[5] While there is no strict requirement for the Appellant to provide corroborating evidence, it is still his onus to establish the facts underlying his claim on a balance of probabilities. He argues that he accurately described the start of his relationship with K and responded to all of the RPD's questions. However, the Appellant's testimony does not need to be doubted for it to be overall insufficient to establish his claim.

[15] Based on my review of the hearing, the Appellant's testimony was vague and lacked details that I would expect him to be able to provide. For example, he was unable to confirm whether there were any First Information Reports, arrest warrants, or summons issued against him. He was not able to confirm to whom the bribes were paid for his release in either of his arrests, and he did not know whether there were any conditions attached to his release. These are all important details that would have personally affected the Appellant's day-to-day life in India.

[16] The Appellant provided ample evidence regarding elements that had little to do with the core of his claim, such as new articles regarding the farmer's protests. In contrast, there was almost no evidence in the record regarding essential elements of his claim, including his relationship with K

[5] *Barros Barros v. Canada (Citizenship and Immigration)*, 2022 FC 9.

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or Am's death. It would reasonably be expected for him to provide corroborating evidence of this relationship, which is the crux of his claim, as well as the events that transpired as a result.

[17] When asked for evidence of his relationship with K, the Appellant testified that they only communicated via phone calls, therefore there was no record of text messages or social media communications. When asked by the RPD whether he had any documentary evidence regarding Am, or to demonstrate that Am had died, the Appellant testified that he was no longer in touch with Am's family. When asked for evidence from Ak, the Appellant testified that Ak did not want to provide a written statement.

[18] Despite the importance of the above evidence, I accept the Appellant's explanations for their absence. However, the Appellant's reasonable explanations for their absence do not lend further weight to the Appellant's allegations. Further, the Appellant also failed to provide evidence that he could have reasonably obtained. After assessing the Appellant's testimony and documentary evidence, I find that there is insufficient credible and reliable evidence to establish certain core elements of his claim.

Arrests were extrajudicial

[19] Based on my independent review, both of the Appellant's alleged arrests were extrajudicial, and the Appellant has not expressly contested this finding. According to his BOC, there was no legitimate reason for either of his arrests. During his first arrest, the Appellant was forced to sign blank papers and give the police his ID. On both occasions, he was tortured and released after the Sarpanch paid a bribe. There also is no evidence to establish that there was any formal action against the Appellant, such as a First Information Report (FIR) or an arrest warrant. All of the above weigh in favour of establishing that the Appellant's arrests were extrajudicial in nature.

The Appellant did not file a complaint regarding Am's death

[20] The RPD was correct to find that there was insufficient credible and reliable evidence to establish that the Appellant had filed a formal complaint against K's father and his goons for killing Am. The Appellant's testimony with respect to this issue was vague and inconsistent.

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[21] When asked by the RPD whether the police provided him with a FIR after filing his complaint, the Appellant responded in the negative, and said that the police assured him that they would investigate but they were false assurances. When the RPD responded that the police were supposed to provide a copy and asked whether the Appellant had tried to get a copy of the FIR, the Appellant reiterated that they did not give him a copy and told him that they would investigate and let him know. When asked by the RPD how the police would investigate if they did not take a report, the Appellant responded that they just gave him false assurances but did not take any action.

[22] Later in the hearing, the RPD asked the Appellant why the police would pressure him to withdraw a complaint if no complaint had been filed. The Appellant responded that the police pressured him to withdraw the complaint. When the RPD asked him to confirm whether a report was filed, the Appellant responded that he did not know what they did after, they only reassured him that they would investigate.

[23] The Appellant's testimony was inconsistent with the National Documentation Package (NDP) regarding the processing of complaints. A FIR is a report produced by the police when information is first received about an offence at a police station.[6] According to the NDP, police officers must register a FIR when information about an offence is received, and FIRs must be uploaded online within 24 hours.[7] If the Appellant had indeed filed a complaint, a FIR would be registered, regardless of whether the police took any subsequent action. Even if the police did not give the Appellant a copy of the FIR as they should have, he would be able to obtain one himself.

[24] When asked by the RPD why he had not obtained one online, he testified that neither he nor his family is educated, so no one had information on that. I do not accept this explanation, as the Appellant was nonetheless able to obtain other documentation and records from India with his family's assistance. He was also represented at all times by counsel. Even if the Appellant did not

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[6] National Documentation Package, India, 29 November 2024, tab 9.8: First Information Reports (FIRs), including requirements and procedures to file an FIR; whether a complainant can obtain a copy; appearance and security features; whether FIRs are centralized and included in police databases, including the Crime ... Immigration and Refugee Board of Canada. 4 June 2021. IND200628.E.

[7] National Documentation Package, India, 29 November 2024, tab 9.3: First Information Reports (FIRs), including procedures and time frames followed by police to inform complainants that an investigation will not be conducted (2015-May 2017). Immigration and Refugee Board of Canada. 1 May 2017. IND105779.E.

know at the time of the RPD hearing that a copy of the FIR could be obtained online, he could have obtained one for the purposes of this appeal. The Appellant's failure to provide a copy of this document leads me to conclude that he did not file a complaint regarding Am's death.

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The Appellant was not arrested in XXXX of 2023

[25] The lack of FIR regarding Am's death casts doubt on the remainder of the Appellant's allegations, including his second arrest and the subsequent police visits. The Appellant alleges that he was arrested a second time because the police wanted him to withdraw his complaint. I cannot accept this allegation, as it is forcibly tied to the existence of a formal complaint.

[26] This conundrum is not resolved by the Appellant's documentary evidence, which is inconsistent with respect to his second arrest and detention. The first set of affidavits provided by the Appellant's parents both state that the Appellant was arrested in XXXX of 2023 and threatened by the police to withdraw his complaint.

[27] However, the Sarpanch's affidavit only mentions the first of the Appellant's two alleged arrests and detentions. This is concerning, as the Sarpanch was the individual who allegedly arranged for the Appellant's release on both occasions. Moreover, although the Sarpanch's affidavit mentions Am's death, it does not state that the Appellant was arrested a second time in relation to his complaint about this death.

[28] When asked by the RPD why the affidavit did not mention the second arrest, the Appellant responded that he had told the Sarpanch to include it. I do not accept this explanation, as it falls on the Appellant to establish his allegations and ensure that his evidence is accurate before submission. I would expect the Sarpanch's affidavit to include this key detail, given its central importance to the Appellant's narrative, and the fact that the Sarpanch was a direct actor who secured the Appellant's release.[8] The omission of the Appellant's second arrest in the Sarpanch's affidavit, in conjunction with the fact that the Appellant has not established that he filed a complaint, leads me to conclude that the Appellant was not arrested a second time.

[8] *St-Sulne v Canada (Citizenship and Immigration)*, 2020 FC 619.

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No charges under the *National Security Act*

[29] The RPD was correct to find that the Appellant had not established he was charged under the *National Security Act* (NSA). The Appellant has not contested this specific finding. However, he argues that he provided evidence to establish the police visits in XXXX of 2024. Even if I accept that the police visited his parents in XXXX of 2024, there is insufficient evidence to establish that charges have been filed against the Appellant.

[30] According to the Appellant's BOC, the police threatened that they would file NSA charges against him. In his updated BOC, the Appellant alleged that the police had gone to his family home and advised them that NSA charges had been filed against the Appellant. This is corroborated in his mother's affidavit, which states that the police and BJP goons raided their home in XXXX of 2024 and informed them that they had filed NSA charges against the Appellant. His father's affidavit also states that NSA charges were filed.

[31] Overall, the Appellant's evidence with respect to this allegation is insufficient to establish that NSA charges were filed against him. The presumption of truth applies to the Appellant and his parents' belief that NSA charges have been filed. However, this does not mean that I must accept the police's statement to his parents as objectively true.[9]

[32] When the RPD asked the Appellant whether the police gave his parents any evidence of the charges, the Appellant testified that the police went to his home with some goons and told his family. When the RPD asked him whether the police had provided his family with a warrant or a summons as per procedure, the Appellant testified that he had no information on that, but the police advised his parents that they would find the Appellant anywhere and kill him. His parents' affidavits do not include other information, such as whether they saw any documentation, what the Appellant was being accused of, or any other relevant detail.

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[9] *Olusola v. Canada (Citizenship and Immigration)*, 2020 FC 799.

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[33] According to the NDP, the NSA can be invoked by authorities when the defence of India, foreign relations, or the security of India is concerned.[10] Further, the NDP is clear in stating that a FIR is the first step in any police investigation. It is only after the completion of an investigation that charges can be filed. The subject of a FIR would be sent notice once the FIR is filed.[11] As the Appellant has alleged that the police have filed charges against him, I would expect there to be official documentation to this effect. At a minimum, I would expect the Appellant or his parents to be sent notice of the initial FIR.

[34] Given the absence of any details regarding the charges, and the lack of any official documentation, which is inconsistent with the information set out in the NDP, I find that there are no charges filed against the Appellant.

Internal Flight Alternative

[35] After the RPD proposes an IFA to the Appellant, the Appellant must prove that he cannot move there pursuant to the two-pronged test set out in *Rasaratnam*.[12] In short, he must demonstrate that he would face a serious possibility of persecution or section 97(1)[13] harm in XXXX XXXX, XXXX, XXXX, and XXXX, or that it would be objectively unreasonable or unduly harsh for him to relocate to these places.

First prong: the agents of persecution do not have the motivation to locate and seriously harm the Appellant in the proposed IFAs

<u>Police visits are insufficient to demonstrate motivation</u>

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[10] National Documentation Package (NDP) on India (29 November 2024), Tab 9.9
[11] National Documentation Package (NDP) on India (29 November 2024), Tab 9.8.
[12] 1) The Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists and/or the claimant would not be personally subject to a risk to life or risk of cruel and unusual treatment or punishment or danger, believed on substantial grounds to exist, of torture in the IFA.
2) Moreover, the conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claimant, for him to seek refuge there.; *Rasaratnam* v. *Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
[13] *Immigration and Refugee Protection Act* (IRPA), S.C. 2001, c. 27, as amended, subsection 97(1).

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[36] In weighing all of the above, I disagree with the Appellant's argument that the police visits demonstrate that the agents of persecution would have the motivation to locate and seriously harm him in the proposed IFAs. The Appellant alleges that after his departure from India, the police raided their home in XXXX of 2024, assaulted them, and advised them that NSA charges had been filed against the Appellant. The Appellant's new evidence indicates that approximately two weeks after the RPD hearing, unknown individuals attacked his father and uncle.

[37] I find these 2-3 visits are insufficient to establish that the agents of persecution would have the motivation to locate and seriously harm the Appellant in the proposed IFAs. In my view, the following would suggest the contrary:

a. The Appellant has not established his participation in the farmers protests;

b. There is insufficient evidence to establish a link between the Appellant's relationship with K and the police's actions after XXXX of 2023;

c. There is no formal complaint against the agents of persecution, which might motivate them to continue pursuing the Appellant; and

d. There are no criminal charges against the Appellant, therefore any attempts to locate and seriously harm the Appellant would have to be extrajudicial in nature.

[38] I acknowledge that the police found the Appellant when he was in hiding at his uncle's house in Delhi, one week after he was released from his second detention. However, his uncle paid the police a bribe and there was no further action. That the police did not arrest, detain, or seriously harm the Appellant so soon after the events in question, even after pursuing him all the way to Delhi, suggests that they would not be motivated to locate and seriously harm him in the proposed IFAs almost two years after he fled the country.

[39] The Appellant argues that the extrajudicial nature of the arrests does not mean that the police lack the means to locate him. I will not address the Appellant's arguments regarding the capacity of the agents of persecution to locate and seriously harm the Appellant in the proposed IFAs. As the Appellant has not demonstrated that the agents of persecution would have the motivation to locate

and seriously harm him, there is no need for me to explore the means by which they might do so. Accordingly, the first prong is met.

Second prong

[40] I agree with the RPD's conclusion that it would not be objectively unreasonable in all the circumstances, including those particular to the Appellant, for him to relocate to the proposed IFAs.

[41] I disagree with the Appellant's argument that he cannot safely live in the proposed IFAs because his family could disclose information about him to the police out of fear. As the Appellant has not established that the police have the motivation to locate and seriously harm him in the proposed IFAs, he would still be able to live there safely, even if his family disclosed his location to the police.

[42] The Appellant argues that he would not be able to relocate to XXXX and the other proposed IFAs, however he does not provide any further explanation apart from stating that he would not be able to find work in XXXX because of his education level. He also argues that it has not been established that he would be able to work in the proposed IFAs. I cannot accept this argument, as it attempts to reverse the onus onto the Board. If the Appellant would not be able to find work in the proposed IFAs, it is his burden to demonstrate this. Even if I accept that he would not be able to find work in XXXX due to his education, the Appellant has not demonstrated that he would not be able to find work in XXXX XXXX, XXXX, or XXXX.

[43] The Appellant has not submitted any other arguments under the second prong, and I do not see any other factors that emerge perceptibly from the evidence. In the absence of any other factors to consider, I find that the Appellant has not established that it would jeopardize his life or safety if he were to relocate to the proposed IFAs, and the second prong is met.

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CONCLUSION

[44] I dismiss the appeal and confirm the decision of the RPD that the Appellant is neither a Convention refugee nor a person in need of protection.

(*signed*) *Annie Song*

Annie Song

May 30, 2025

Date