**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 68/2025**
**[2026] NZSC 25**

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| BETWEEN | GURINDERPAL SINGH BRAR<br>Applicant |
| AND | THE KING<br>Respondent |

Court: Williams, Kós and Miller JJ

Counsel: T M Cooper KC for Applicant
B J Thompson for Respondent

Judgment: 2 April 2026

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

[1] The applicant, Gurinderpal Singh Brar, was found guilty by a jury of the attempted murder of Harnek Singh in concert with six co-accused including one Jaspal Singh who pleaded guilty prior to trial and gave evidence for the Crown. Mr Brar seeks leave to appeal against conviction on one issue. He argues the trial Judge failed to give a reliability warning under s 122(1)(c) of the Evidence Act 2006 in relation to Jaspal's evidence and ought to have done so. The Court of Appeal did not accept that argument.[1]

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1 See *Brar v R* [2025] NZCA 265 (Palmer, Hinton and Edwards JJ) [CA judgment].

## Background facts

[2] Prior to the offending, Mr Brar had established two gurdwaras, or Sikh temples, and attracted a significant following. The victim is a Sikh radio host who expressed views at odds with Mr Brar's.

[3] The Crown case was that Mr Brar procured his co-defendants to attempt to murder the victim. Jaspal's evidence was that, on the evening of the attack, he and another co-accused were directed by Mr Brar to carry out an attack on the victim, which they then did. In the course of the attack, the victim was stabbed over 40 times and his injuries were extensive, but he survived.

[4] Woolford J, the trial Judge, did not give a reliability warning in relation to Jaspal's evidence. He did, however, in summing up, make three relevant comments:

> [132] Counsel for [Mr] Brar says that Jaspal Singh has been motivated by the 30 per cent discount on his sentence to make up false evidence against him. This has been referred to through the trial as a deal with the Police, but I should advise you that the extent of any discount for co-operation with the authorities is entirely a matter of discretion for the sentencing Judge.
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> …
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> [144] Counsel [for one of Mr Brar's co-accused] also questions the motivations of Jaspal Singh to implicate both [Mr] Brar and [one of Mr Brar's co-accused] in light of the money he owes and the favourable treatment he received from the sentencing Judge.
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> …
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> [149] … Ultimately what you make of all the evidence, including the evidence of various witnesses that you have seen and heard, is entirely up to you. You are entitled to decide whether you think their evidence is credible. You will also need to consider whether their evidence is reliable. Credibility and reliability are different concepts. Credibility is honesty and sincerity. Reliability can be different. A witness can be entirely honest, but they may be mistaken. These are matters for you to decide. You may accept all, part only, or none of what a witness has said. It is entirely a matter for you.

## Court of Appeal

[5] The Court of Appeal held that a reliability warning was not required because the reliability and credibility of Jaspal's evidence was a central issue at trial and would

have been well understood by the jury.[2] Defence counsel had traversed the reasons for unreliability including by reference to evidence led that was inconsistent with Jaspal's account and by reference to the possible effect of the sentencing advantage obtained.[3] The Court referred to the fact that no counsel had sought a reliability warning.[4] The Court also rejected the suggestion that the jury should have been advised that, although Jaspal was sentenced prior to the trial, the Crown could have appealed his sentence had he not come up to brief. The Court said "there is nothing to indicate that the nature of the evidence as given would have been a basis to revisit the extent of the discount on appeal."[5] Further, any downstream effects of Jaspal's cooperation on his parole prospects were speculative.[6]

[6] The Court distinguished its earlier decisions in *Kahia v R* and *Bamber v R* in which the Court held warnings should have been given.[7] These cases involved immunity from prosecution rather than sentencing discounts. The Court considered the concept of immunity and its implications were more difficult for the jury to comprehend than sentencing discounts. Directions from the Judge were therefore necessary in that context but not in Mr Brar's case.

**Submissions on appeal**

[7] Mr Brar's primary argument is that co-offender evidence has all the reliability problems of cellmate confession evidence and this Court's approach in *W (SC 38/2019) v R* should apply.[8] Juries, it is submitted, make the same fundamental attribution error—assuming principled motives—that they make in respect of cellmate confession evidence.

[8] In addition, Mr Brar submits that some incentives on co-offenders to lie are not obvious to juries. For example, cooperation with the authorities may well have produced downstream advantages in terms of Jaspal's treatment by the Parole Board. Co-offenders have the advantage of knowing all the relevant facts and background of

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2 CA judgment, above n 1, at [16].
3 At [17].
4 At [18].
5 At [19].
6 At [20].
7 At [21] citing *Kahia v R* [2022] NZCA 381 at [107] and *Bamber v R* [2024] NZCA 222 at [60].
8 *W (SC 38/2019) v R* [2020] NZSC 93, [2020] 1 NZLR 382.

the offending so they can construct plausible narratives implicating the target defendant. Although Jaspal had already received his sentencing discount, the jury did not know that the incentive was still active because the Crown could have appealed against that sentence if Jaspal had not come up to brief.

[9] Mr Brar argues that the Judge's direction in the present case—that the discount had the imprimatur of the sentencing Judge—may have given the jury the misleading impression that the Court was satisfied Jaspal's evidence was truthful. He refers to the New South Wales Bench Book model direction, which includes the following in relation to evidence given by co-offenders:[9]

> Such a person may be motivated to give false evidence in order to qualify for a reduction in his or her sentence. [Where a discount has already been granted, as is the normal case, the jury should be specifically directed as to the precise extent of the discount and the consequences of failing to give evidence in accordance with his or her undertaking …].

[10] Mr Brar also reprises in this Court his argument that this case is analogous in principle with the decisions in *Kahia* and *Bamber*.

[11] For the Crown, it is submitted that the need for a warning is circumstance dependent. Cellmate confession evidence is particularly problematic because incentives on the cellmate may not be obvious to the jury. In this case, the most important incentive was clear and established in the evidence. Jaspal's criminal history was traversed in cross examination. The fact of the discount was repeated to the jury when the Judge summarised the defence cases. A reliability warning would not, the Crown submits, have materially assisted the jury.

[12] The Crown agrees with the Court of Appeal that any downstream advantages before the Parole Board were speculative and it was unnecessary to explore that issue where there was a clear and established incentive in play. As to the way the Judge directed the jury on the source of the discount, this, the Crown argues, was necessary because the defendant had consistently called the discount a "deal with the Police". It was therefore appropriate for this to be corrected in the manner it was.

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9 Judicial Commission of New South Wales *Criminal Trial Courts Bench Book* (Sydney, 2002) at [4-385].

[13] Finally, the Crown submits that, while not dispositive on its own terms, the fact that none of the five experienced criminal defence counsel sought a reliability warning at trial must at least be taken to have indicated that issues around Jaspal's reliability and credibility were not seen as warranting clarification from the Judge.

**Analysis**

[14] We are not satisfied that it is necessary in the interests of justice to grant leave in this case.[10] Although the circumstances in which reliability warnings should be given in relation to the evidence of a co-offender may in other circumstances give rise to a question of general or public importance,[11] this is not an appropriate case in which to address that. The nature of Jaspal's incentive to lie was obvious to the jury and a central theme in the defence. This may be contrasted with the context in *W (SC 38/2019) v R.*[12]

[15] We accept also that there may be circumstances in which it is appropriate to draw an analogy between immunity from prosecution (as addressed in *Kahia* and *Bamber*) and sentencing discounts. We do not, however, consider it is sufficiently arguable that this course was required here to warrant granting leave. It is relevant that there was a good deal of other independent circumstantial evidence tending to support Jaspal's evidence. This included evidence from a third party of Mr Brar's unsuccessful attempt to enlist him in the attack.

[16] It follows that we are not satisfied that a s 122 direction could have made a difference in the particular circumstances of this case. We therefore do not perceive a risk of a substantial miscarriage of justice if leave is not granted.[13]

**Result**

[17] The application for leave to appeal is dismissed.

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

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10 Senior Courts Act 2016, s 74(1).
11 Section 74(2)(a).
12 See *W (SC 38/2019) v R*, above n 8, at [95] per Glazebrook, O'Regan and Ellen France JJ.
13 Senior Courts Act, s 74(2)(b).