



Neutral Citation Number: [2021] EWHC 2136 (Admin)

Case No: CO/2322/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

28th July 2021

Before :

MR JUSTICE FORDHAM

Between :

RAHIMA ABDI OMAR

Applicant

- and -

**PROSECUTORS OFFICE AT THE APPEAL
COURT OF THESSALONIKI, GREECE**

Respondent

Abigal Bright (instructed by Eshaghian & Co) for the **Applicant**
Tom Cockroft (instructed by CPS) for the **Respondent**

Hearing date: 28.7.21

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge after an ex tempore judgment delivered in a remote hearing.

MR JUSTICE FORDHAM :

Introduction

1. At an oral hearing on 13 July 2021 Holman J granted conditional bail to the Applicant in this extradition case, on conditions which he set out in his Order, and for reasons given in an oral judgment of which Counsel have provided an agreed note. Two problems have arisen with implementation, leading to an application to vary the conditions. There is common ground as to how those problems should be resolved, and that the Court has jurisdiction to make the variations. Holman J has expressed himself content that another Judge deal with the matter, as I have done at a remote hearing by MS Teams which I am satisfied was justified as a mode of hearing and preserved the open justice principle, as an accessible public hearing identified in the Court's cause list, with the now familiar arrangements for anyone wanting to observe the hearing.

The pre-release tagging problem

2. The bail conditions included the following: “(a) The Applicant must live, and sleep each night, at [a named address]. (b) The Applicant must submit to a curfew, electronically monitored, daily, starting at 10pm and ending at 7am. (c) The Electronic Monitoring Service, which has responsibility for electronic monitoring of curfews, must fit to the Applicant an electronic tag before the Applicant is released from [named] prison”. The problem is with (c): pre-release tagging. The Applicant's representatives have been informed that the EMS is able only to fit an electronically-monitored box at the specified address and fit and co-locate the tag at that address (in an exclusion zone case they can fit a GPS bracelet for locational monitoring). The parties are agreed that, in the circumstances of this case, the solution is to delete the wording of (c). I agree.

The identity document enquiry problem

3. The bail conditions also included the following: “(d) The Applicant's British passport must remain with police who have seized it. (e) A Police Liaison Officer at the Westminster Magistrates' Court must establish whether the Applicant has received a passport, or other type of identity document that can be used for international travel, other than the Applicant's British passport which was seized by British police when the Applicant was arrested in these extradition proceedings and is still held by police. If the Applicant has received a passport or type of identity document other than the Applicant's British passport, any such passport or identity document must be surrendered to the Police Liaison Officer at the Westminster Magistrates' Court.” The problem is with (e): the duty on the PLO to conduct an enquiry as to receipt by the Applicant of any other passport or identity document usable for international travel (to be followed by surrender of any such document). The Applicant's representatives have been informed that this enquiry is not within the PLO's remit, that the PLO has no access or authority to make the required checks, that one way forward would be for the Court to get the PLO to enquire of the Applicant whether she holds any further identity document, or to make a court order requiring a named police extradition unit officer to make specified enquiries. The parties are agreed that, in the circumstances of this case, the solution is

to replace (e) with: “The Applicant must not possess or apply for any international travel document”. I agree.

Bail conditions and third party requirements

4. Mr Cockroft helpfully brought to my attention section 3(6) of the Bail Act 1976 which expresses bail conditions in terms of requirements imposed on the bail applicant, as the person who “may be required ... to comply, before release on bail or later, with such requirements as appear to the court to be necessary”. In sections 3(4) and (5) a pre-release surety or security – as with the £9,300 pre-release security which is another of the conditions imposed by Holman J in this case – is also expressed as a requirement on the applicant, but it may be given by a third party on the applicant’s behalf (as is spelled out in the case of a security: s.3(5)). It is not necessary to get into those provisions and arrangements which concern forfeiture. The section 3(6) point helpfully brings into focus the question of bail conditions which require specific action by a third party such as in this case the EMS or the PLO. Third party actions will frequently be interwoven into bail conditions: see condition (d) in the present case (police retention of the British passport). A court can always make it a condition of the applicant’s bail – expressly or by necessary implication – that a third party does something. But I think the answer is that this is not – and certainly need not involve – an obligation imposed on a third party by a court order. Rather, the consequences of the third party action for satisfaction of a condition may affect whether the applicant can be released or whether the applicant is placed in breach (for which there may be an excuse and a need for variation). So, if family do not produce pre-release security the family does not breach a court order: instead, a condition of the applicant’s release is not met and the applicant remains in custody. And a bailed individual could, for example, be placed in breach of a bail condition to ‘live and sleep’ at a specified address if other occupants throw them out of the house. That could lead to action for breach, or it could lead to a variation – but, as it seems to me, the other occupants would not have disobeyed an obligation imposed on them by a court order. The drafting of conditions may be important. Be all of that as it may, the problems in this case are not that the EMS and PLO were woven into conditions. Rather, the problems relate to practical difficulties – unforeseeable by the parties and by Holman J – as to implementing what was built-in to the conditions as framed.

Conclusion

5. I make the variations and reissue the Order for bail. I do so in light of the following conclusions and reasons. (1) It is neither necessary nor appropriate for this Court to start afresh and reconduct the entire consideration of bail; what is appropriate is to start with Holman J’s order, intentions and reasons. (2) Although Holman J considered conditions (c) and (e) (original wording) to be ‘requirements which were necessary to secure surrender to custody’ (s.6(6)), they were necessary requirements as components of a suite of interrelated conditions. It is not the case that a difficulty or adjustment in relation to one component would necessarily materially alter the overall position as to risk, still less to ‘cross the line’ so that bail was withheld. (3) The fitting of the electronic tag before leaving prison needs to be seen in the context that the purpose of the tag is in fact non-immediate: it is to monitor the night-time curfew starting from 10pm. Prompt fitting at the address can achieve that, in principle from day one. (4) Although the PLO has suggested an enquiry of the Applicant as to other identity documents, an obligation can effectively be placed on the Applicant via

the new wording of condition (e). (5) The variations do not materially affect the risk of absconding, in the light of the remaining other conditions. Holman J described that risk as low and manageable, in the light of the conditions as whole. (6) There are real practical problems of implementation which tend to obstruct and delay release, in the context of liberty of an individual who was supposed to be released (and returned to her children) some 15 days ago or shortly thereafter. (7) An appropriate, sufficient and proportionate solution has been identified. (8) The Respondent – fairly and properly – agrees that the variations are appropriate.

28.7.21