



Neutral Citation Number: [2021] EWHC 2188 (Admin)

Case No: CO/2563/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

30th July 2021

Before :

MR JUSTICE FORDHAM

Between :

JAMES PATRICK GERALD FLYNN
- and -
THE HIGH COURT, REPUBLIC OF IRELAND

Applicant

Respondent

Graeme Hall (instructed by National Legal Service) for the **Applicant**
Victoria Shehadeh (instructed by CPS) for the **Respondent**

Hearing date: 30.7.21

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.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. This is an application for bail in an extradition case, bail having been refused in the magistrates' court. My jurisdiction, pursuant to section 22(1A) of the Criminal Justice Act 1967, involves considering the question of bail afresh. The case has been listed as a matter of urgency and the mode of hearing has been by Microsoft Teams. If so, that is a good thing. This was a public hearing, listed in the cause list with email details usable by any member of the press or public who wished to observe the hearing: open justice has been secured. I am satisfied that the mode of hearing was appropriate and involved no prejudice to the interests of any party or any person. The Applicant is aged 30 and is wanted for extradition to Ireland. That is in conjunction with a Trade and Cooperation Agreement Arrest Warrant issued on 12 July 2021 in the High Court in Ireland and certified by the National Crime Agency on the same day. The warrant is an accusation warrant. The Applicant is wanted for 6 burglaries and a conspiracy to burgle, said to have taken place between November 2012 and January 2013, and a robbery which took place on 25 January 2013. Mr Hall emphasises today that the Applicant vehemently denies all of the allegations.

2. The essence of the case for bail, as I see it, is as follows. The starting point is that this is an accusation warrant and therefore there is a presumption in favour of the grant of bail. Mr Hall says that that presumption is not rebutted or displaced by any of the circumstances in this case. He submits that, even leaving aside any presumption, there are no reasonable grounds for believing that the Applicant would fail to surrender. He further submits that even if any concern were to arise the stringent proposed bail conditions are ample to allay that concern. Mr Hall emphasises the following points in particular. The Applicant is a person of good character with no previous convictions. He has lived openly, including openly in Northern Ireland since 2017, and openly when in England (where I am told he has an address in Watford) since starting a business here during Covid (I have seen documents including the Watford address). He has had legitimate business interests in the US, Northern Ireland and now England (since March 2021). He was compliant on arrest. It is true that he went to the US in 2013 (as has been said against him), but that was not as a fugitive. It was for a legitimate reason: to pursue business opportunities in the US with his brothers, as indeed he successfully did. Had he been evading justice he would not have waited two or three months (after relevant events). Although he has only been in business in England since relatively recently, he has a wife and 3 year old son and they have been living as a family in Northern Ireland. From 2017 he was in Northern Ireland, leading a diligent working life and (for example) donating to a local foodbank in November 2018 and encouraging other businesses to do so. He was readily and quickly identifiable, as can be seen from what happened regarding his arrest. He is a British citizen (as well as a US citizen). There is a house in Woking, owned by his uncle, where he can be required to live and sleep with an electronically monitored overnight curfew. There are other robust proposed bail conditions. They include regular attendance at the local police station and the surrender of his UK passport and the US passport – which has been volunteered today – and a prohibition on international travel or attending any international travel hub. There is the very substantial £100,000 cash pre-release security together with a pre-release lodged surety of £350,000 (linked to unmortgaged properties owned by his mother). That security and that surety demonstrate the very high degree of family trust in him and would stand as a very strong disincentive to flee and visit the financial consequences on family members. Another anchor are the ties with his wife and young son. The son

has a diagnosis of autism. The Applicant himself is struggling in prison. He will not realistically be able to flee anywhere. The presumption in favour of bail is not displaced or rebutted. There are no substantial grounds to believe that he will fail to surrender, and the proposed bail conditions allay any concerns on that score, if there are any. Bail is opposed on the basis that there are substantial grounds for believing that the Applicant would fail to surrender if released and notwithstanding the proposed bail conditions, and that the presumption in favour of bail is displaced.

3. I am not prepared to grant bail in this case. In my judgment the presumption in favour of the grant of bail referable to this as an accusation warrant is, in all the circumstances of the case, displaced. There are, in my judgment, substantial grounds for believing that the Applicant would fail to surrender if released by me on bail, notwithstanding the conditions including the very substantial cash security and property-based surety. I will explain why.
 - i) The first point is that the matters for which the Applicant faces extradition to Ireland are serious. They include a robbery on 25 January 2013 which took place at a credit union where two members of the Irish police force were conducting a cash escort, accompanying vehicles collecting cash from credit unions. The robbery described in the warrant involved an ambush undertaken by five raiders: one driving the getaway car and four in the car park. One of the group shot one of the officers dead, using a shot gun fired from a distance of 2 metres. Another raider armed with a handgun held the other police officer at gunpoint. Two other gang members in the car park stole the cash from the credit union employees' vehicles. The fifth raider drove the getaway car as they sped away. If convicted, the Applicant could expect a very substantial custodial sentence. To the robbery are to be added the various burglary related charges. There is a tie-in. One of the burglaries involved stealing the vehicle which is said to have been the getaway car, and which the Applicant is said to have driven by to check out the location of the robbery earlier on the day it took place.
 - ii) The next factor is that there has been a conviction by a jury in Dublin in 2020 of Aaron Brady of the murder of the officer and of the robbery. That means that there is a clear (indeed irresistible) basis which confirms Aaron Brady's involvement, and which confirms that the alleged robbery took place in the way which is described. The question is: who were the other raiders and was the Applicant one of them? There is a platform for a further trial, and the Applicant can be taken to understand this. That increases the risk and the incentive.
 - iii) The next feature of the case, which is relevant to my evaluation of risk, is this. According to the Irish authorities the Applicant and Aaron Brady were best friends and were in each other's company on a daily or almost daily basis in January 2013. According to the Irish authorities, the Applicant was interviewed in February 2013 and gave a statement to the police in relation to 25 January 2013; in that statement the Applicant confirmed that he was in the company of Aaron Brady and another individual for most of the day on 25 January 2013; that they were driving around together and at the Applicant's house. The conviction of Aaron Brady of the murder and robbery on 25 January 2013, when put alongside these features, gives rise to obvious and evidenced concerns. One concern is about the Applicant and Aaron Brady being together and driving around on that day: the day of the robbery for which Aaron Brady has

subsequently been convicted. More specifically, the information from the Irish authorities supports the very clear concern that the Applicant has already given false information (including a false alibi for Aaron Brady), to the authorities, in relation to this offending and their pursuit of it, including as to his own knowledge and involvement. I am not finding facts. I am evaluating risk, but this, in my judgment, is a clear and identifiable concern.

- iv) Alongside all these considerations, are the various features of the case and the evidence against the Applicant, as set out in the warrant, which is circumstantial in nature but which is on the fact of it relevant and significant evidence. All these considerations in my judgment – alongside the other features of the case – give rise to an objectively evaluated, very substantial risk and incentive that the Applicant would seek to evade and avoid accountability to the Irish criminal process, not by remaining in compliance with bail conditions and fighting his extradition through the process of law, but rather by seeking to relocate and by failing to surrender.
- v) The next point is that the Applicant is young and mobile. He has relocated several times in the past. That includes his relocation to the United States in 2013. He attained US citizenship as well as being a British national with a British passport. His mobility includes his relocation to Northern Ireland from the US in 2017. It includes his more recent relocation – at least from time to time – to England. His son is very young and the indications are that the wife and son are both also very mobile. They have been in Northern Ireland. It is said that they could come to be with the Applicant in Woking. But they could equally join him somewhere else. I cannot accept that there are strong ties on the evidence based on work or family life or citizenship which provide a sufficient anchor so far as failure to surrender is concerned. It is said, and evidenced, that the Applicant arrived back in the England just three days before his arrest.
- vi) The next point is that the Applicant relocated in April 2013 having given a witness statement in February 2013 relating to the day of the robbery at which the police officer was shot dead. I am asked to proceed on the basis that he had a legitimate reason to go to the US, to pursue work, and that he cannot be taken to be a fugitive. In deciding this bail application I am not making primary findings of fact (still less on oral evidence with cross-examination). My job is different: I have to evaluate risk. The fact is that just a few months after the robbery, and killing of a police officer, of which his best friend was suspected, and a few months after giving a witness statement in relation to that very day in which he had provided information (on the face of it an alibi) for that best friend, he headed off to the US, crossing borders. His best friend has now been convicted of that robbery and that murder. He is now being pursued as being one of the five-person gang. According to the Irish authorities, as described on the face of the warrant, not only did the Applicant leave for the US but so did Aaron Brady his best friend who was subsequently brought to justice; and so did two other individuals each of whom left for the US but via Australia. One of those was the Applicant's brother. Both of the individuals who left for the US – via Australia – are as I understand it from the warrant said to be implicated in the criminal conduct covered by the warrant. Also implicated is the third individual with whom the Applicant said (in his 2013 witness statement) he and

Aaron Brady had spent the day on 25 January 2013. There are all obvious and serious concerns that arise out of the fact that the Applicant relocated to the US a few months after giving his witness statement – itself said to be false – which related to these matters. These concerns are directly relevant, in my judgment, to the assessment of risk in relation to failure to surrender, now that the Applicant knows that he is being pursued in relation to these matters, that it is said that his witness statement had been exposed, and that his best friend has been convicted.

4. Notwithstanding all that I have heard and been told, in all the circumstances even the very substantial cash security and surety, together with the curfew and other proposed conditions, have not served to allay the concerns that I have. I am not reviewing the refusal of bail of District Judge Griffiths on 22 July 2021. But, having considered the matter afresh, I have reached the same conclusion. Bail is refused.

30.7.21