Neutral Citation Number: [2021] EWHC 3272 (Admin)

Case No: CO/3202

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

Royal Courts of Justice
Strand, London, WC2A 2LL

2nd December 2021

Before :

MR JUSTICE FORDHAM

- -

Between :

MAREK POLAKOWSKI	**Applicant**
- and -	
POLISH JUDICIAL AUTHORITY	**Respondent**

- -
- -

George Hepburne Scott (instructed by Bark & Co Solicitors) for the **Applicant**
Sharmistha Michaels (instructed by CPS) for the **Respondent**

Hearing date: 2/12/21

Judgment as delivered in open court at the hearing

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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.

MR JUSTICE FORDHAM :

1. This is an application for bail in an extradition case. The Applicant is aged 65 and is wanted for extradition to Poland. That is in conjunction with a conviction EAW (European Arrest Warrant) issued on 4 October 2019 and certified on 13 February 2020, on which he was arrested on 10 July 2020. Bail has been refused in the magistrates' court on 11 July 2020, 17 October 2020, and 15 November 2021. My function involves considering the bail merits "afresh".

2. The mode of hearing was a remote hearing by Microsoft Teams, which at one point it appeared was going to need the backup of a parallel BT dial-in facility. The case had originally been listed as an in-person hearing at the Royal Courts of Justice but I acceded to the request for a remote hearing from both Counsel, one of whom wanted to honour pre-existing commitments to attend in-person hearings at Westminster magistrates court, and the other of whom needed to be at home for childcare reasons associated with a Covid outbreak at a school. I am satisfied that the mode of hearing was justified in all the circumstances. I agree with both Counsel that it involved no risk of prejudice to the interests of their clients. Finally, it involved no impairment of the open justice principle in circumstances where the Court's cause list published this case and its 2pm start time, together with an email address usable by any member of the press or public who wished to observe the hearing by clicking on a Microsoft Teams link.

3. The case for bail advanced, with his usual clarity, by Mr Hepburne Scott is in essence as follows. The Applicant is a good candidate for bail. He is highly unlikely to abscond if released by this Court on bail. He strongly asserts that he will comply with bail and the conditions imposed. He suffers from ill-health, with high blood pressure and diabetes, which will be a paramount concern to him. He has already served more than half of the cumulative six year sentence which is the subject of the EAW. Time served in Poland brought the period to serve down to 35 months and five days, from which (as I am satisfied is right) is to be deducted the 16½ months, so far, of qualifying remand. The Applicant has an 11 year old daughter in Bristol who, prior to his arrest in July 2020, he saw regularly. His ex-wife and his daughter give him "very powerful anchorage". He is vigorously defending extradition, with an extant application for permission to appeal to this Court filed on 1 July 2021, which is outstanding. That application had raised the Wozniak section 2 point of principle (which Mr Hepburne Scott accepts has now fallen away), but also Article 8 ECHR which is now at the forefront. Robust bail conditions are proposed which allay any concern arising in relation to failure to surrender. The proposed conditions are: to live and sleep at the address of a friend; an electronically-monitored curfew 10pm to 5am; the usual prohibitions on travelling to an international hub or applying for an international travel document; a pre-release security of £4,000; and the continued retention of his seized passport.

4. I am not prepared to grant bail in this case. In my judgment, there are substantial grounds for believing that the Applicant, if released by me on bail, and notwithstanding the proposed bail conditions and any which this Court could devise, would fail to surrender. This is a conviction EAW case meaning that no presumption arises in favour of the grant of bail. Notwithstanding the time served in Poland and the qualifying remand in the UK, there remains a substantial period of custody to be served of some 18 months. That stands as a significant disincentive so far as compliance is concerned.

Extradition has now been ordered. Without undertaking any function of assessing the viability of grounds of appeal to this Court, which have not been argued before me, the Applicant may very well perceive a fragility so far as the prognosis for his extant appeal is concerned. The Wozniak point has gone. The Applicant has only been living in the United Kingdom since February 2018. I accept the submission of Ms Michaels that his Article 8 appeal may, at least as a matter of his perception, be regarded as weak. I cannot accept that what the evidence describes as his pre-arrest monthly visits from his Luton base to his Bristol-based 11 year old daughter has a substantial, still less a very powerful, anchoring effect. Nor can I accept that a substantial or very powerful anchoring effect arises so far as concerns the daughter's mother, the Applicant's ex-partner. The Applicant's connection with the daughter also needs to be seen in a context where she had been nearly 8 years old when he came back to the UK from Poland, prior to which he had been communicating with her from Poland, and bearing in mind that he has another (much older) daughter in Poland, with whom he currently communicates from here. His strong assertion that he will comply with bail conditions has to be put alongside his background of 33 offences of swindling, attempted swindling, misappropriation of property, and persuading others to commit prohibited acts of misinformation. It was those offences, committed in his fifties, which led to the cumulative sentence of six years. Moreover, the district judge who ordered extradition on 29 June 2021 (after an oral hearing eight days earlier) made a finding that the Applicant left Poland as a fugitive. That is unsurprising given that he had been granted temporary release from prison in August 2016, which was extended on a series of occasions thereafter. Knowing that he was and would be required to surrender to serve the rest of his custody, he then came to the UK. What that means is that the Applicant has already evaded facing his responsibilities, for the very matters which are the subject of the EAW, by choosing to relocate and by crossing borders. In the light of the various features and circumstances of this case, I have concluded that there are substantial grounds for believing that the Applicant would fail to surrender if released on bail, notwithstanding the conditions which this Court could impose. Bail is refused.

2.12.21