SPECIAL IMMIGRATION APPEAL COMMISSION

Field House,
Breams Buildings
London

Monday, 15th December 2014

BEFORE:

THE HONOURABLE MR JUSTICE IRWIN

BETWEEN:

M2

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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MR H SOUTHEY QC (instructed by Duncan Lewis Solicitors) appeared on behalf of the appellant.

MR S GRAY (instructed by the Treasury Solicitor) appeared on behalf of the Respondent.

MR Z AHMED (instructed by the Special Advocates' Support Office) appeared as Special Advocate.

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Ruling

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Transcribed by Harry Counsell
Tel: 020 7269 0370

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MR JUSTICE IRWIN:

1. I am prepared to grant bail on the conditions that have been laid out.

2. The reasons are that it seems to me on the evidence that is before the Commission this was an ill-judged and extremely foolish move to leave the country at that point, but the probability is that it was not long planned. That is an inference which could easily be upset by some of the material that I have made reference to. It is an issue which, on any future occasion, when he appears before the Commission, and the renewal of bail comes under consideration, the renewal will not be automatic and the Commission will have to consider the abscond risk. If that material is not produced, that might well militate against any renewal of bail. That is a matter for the appellant, of course.

3. At the moment, it appears to me that the abscond risk or the history, rather, is of an impulsive nature rather than otherwise. As I say, that remains to be dealt with on any renewal.

4. The conditions, as I understand it, subject to the grant of bail, have been discussed fully between the parties and there is no need for me to rehearse that.

5. Part of the thinking or the reasoning behind the decision relates to the point made on behalf of the appellant as to disclosure of the national security case, but I make it clear that I do not consider that the obligations under *AF (No. 3)* arise *ab initio*. The thrust of *AF (No. 3*)

is that the substantive case, where liberty is affected, must be summarised or gisted sufficiently. I paraphrase the language.

6. I do not believe that, on a first hearing before any court or tribunal, bail or other interlocutory matters cannot be dealt with because the *AF (No. 3*) obligations have not already been complied with. That will be quite unworkable. It is perfectly proper for the tribunal to proceed on an interlocutory basis on the understanding that those obligations will be complied with. When they have to be complied with may depend on how long the interlocutory processes go on. I am not suggesting that they only arise in the substantive decision, but I do not believe that they can be thought to arise from the first hearing.

MR. SOUTHEY: May I just ----

MR. JUSTICE IRWIN: This is not an opportunity for argument. I am giving some reasons for the decision I have taken. You will have the opportunity to argue in due course, I am sure.

7. What it leaves open is, on a renewal of bail, within the timetable for directions that we have considered already this morning, it seems to me that by the time we get to the rule 38 hearing it will be odd if the *AF (No. 3*) gisting exercise on bail does not arise at or around that point. That I will leave open for argument. I am not making a decision about that. I am clear that the obligations arise where liberty of the appellant is concerned by the time of the substantive decision. I am clear that they cannot arise at the very beginning of the process because, otherwise, the summarising and gisting and the whole process of preparation of it would be pre-empted. It is when it arises in the middle, Mr. Southey.

MR. SOUTHEY: I was not trying to argue. What I was going to do was to try and give the Commission some information, because the issue had arisen, I am aware, in at least one case that I have been involved in in the past before Mr Justice Mitting and the way that it was dealt with before, and we sort of anticipated that directions of this nature might be proposed in this case, but they were not by the Secretary of State, and that is a matter for the Secretary of State to some extent. The way in which it was dealt with before was that -- It arose, in fact, in the B2 case and we had what was described as a prompt but not article 5 compliant bail hearing very early on in proceedings, which was always understood to be a hearing where the Secretary of State would disclose what they felt they could, but there would not be a full rule 38 procedure, and then there would be a rule 38 procedure in relation to bail resulting in what might be described as a more considered bail hearing after the rule 38 procedure, because we certainly recognised in that case - and certainly we would have recognised if we had been asked about it in this case - that you cannot have an article 5 full compliant procedure without rule 38, essentially. One has this need, potentially, for effectively a two-stage approach, the first stage where you deal with bail on a summary basis and then, secondly, rule 38. All I was trying to do was to indicate that there is a precedent for what the Commission is saying.

MR. JUSTICE IRWIN: That is helpful. What I think that it does mean is that, when the rule 38 procedure is finished, the Secretary of State needs to give thought to what can be gisted or summarised for the purposes of bail at around that point. There will definitely then need to be a review of bail, conditions of bail or the grant of bail, at that point. If at that point the

information I have indicated which is in the hands of the appellant is not produced, we will see how that affects the outcome.

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