



Neutral Citation Number: [2020] EWHC 1335 (Admin)

Case No: CO/3050/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 April 2020

Before :

MR JUSTICE FORDHAM

Between :

RAFAL MICHAL KOTLARSKI
- and -
POLISH JUDICIAL AUTHORITY

Appellant

Respondent

GEORGE HEPBURNE-SCOTT for the **appellant**
TOM HOSKINS for the **respondent**

Hearing date: 22 April 2020

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 pursuant to section 22 subsection 1A of the Criminal Justice Act 1967. It is common ground that that jurisdiction is engaged, in circumstances where the magistrates court has previously withheld bail in these extradition proceedings. It is also common ground that my jurisdiction necessarily involves the looking at the matter afresh and considering the bail merits at de novo. I am not reviewing the views expressed by the district judge who in March of this year declined to entertain a bail application, not being satisfied that there had been a sufficient change of circumstances. Nor am I reviewing the refusal in this court of bail by Mr Justice Jay in May of last year, prior to which bail had unsuccessfully been sought before the magistrates. In the case of Tighe [2013] EWHC 3313 (Admin) at paragraph 5 Mr Justice Stewart recorded that the statutory jurisdiction, although sometimes described as an appeal, as one which involves looking at the matter “afresh”.
2. This has been a telephone conference hearing. Sensibly, the parties cooperated and everybody agreed that it wasn't necessary that there be a video link. The hearing has proceeded just as it would have done in open court having been listed in the cause list with contact details available to anyone who wished to dial in. Both counsel have addressed me in exactly the way that they would have done had we all been sitting in the court room. Also present was Ms Williamson of Opus to I am quite satisfied that this constituted a hearing in open court, that the open justice principle has been secured, that no party has been prejudiced, and that in so far as there has been any restriction on a right or interest it is justified as necessary and proportionate.
3. For the appellant Mr Hepburne Scott submits that there is here no real bail risk and I should be satisfied that it is a case where there are no substantial grounds for believing that this appellant will fail to surrender. I interpose that it is not suggested against the appellant that there is a risk of committing further offences, the concern is squarely put as to failure to surrender.
4. In particular Mr Hepburne Scott relies on the appellant's circumstances: his family circumstances since having come to the United Kingdom in 2006. After that time, he has been here and has lived a blameless life with his family. He is on the face of it a hard-working, home-owning, family man. He worked at B&Q as a forklift driver's sense July 2011 up until May 2019 when he was arrested in relation to these extradition proceedings. His wife and his 2 children aged 14 and 2 live together in the family home. The only other country as it is said with which he has any connection is Poland and that is the last place he wants to go and as it was put he is 'straining every sinew' to avoid going back to Poland.
5. All these circumstances and the others referred to in the documents are relied on to support the conclusion that there is no substantial grounds for believing that he would fail to surrender and that he would now seek to abscond from the United Kingdom or from his address in the United Kingdom. Reliance is placed on features that were described by Mr Justice Jay including the fact that the underlying offending in this case in Poland took place when he was quite young: aged 21 and 22 and he is now 36; that he has clearly matured and on the face of it is living a very different lifestyle in his family circumstances.

6. Two other matters are relied on particularly. First, the conditions that have been put forward as being appropriate for bail. Those conditions suggested as appropriate and adequate include a residence requirement with an electronically monitored curfew. They include the payment upfront of £10,000, relied on is being particularly significant especially in the current climate. Other suggested conditions include the surrender of a Polish identity card and daily reporting to a police station.
7. The other matter that has been relied on are the circumstances relating to the coronavirus pandemic and lockdown. I considered the written submissions at about that. Realistically, in his oral submissions, Mr Hepburne Scott accepted that the recent case of *Perry v United States* a decision of this court on the 3rd April 2020 (Mr Justice Dove) was powerfully persuasive of the fact that Covid 19 circumstances in prison conditions at Wandsworth could not materially assist him, particularly in relation to the central question of assessment of risk, it being for the prison authorities to discharge their duty of care to those who are detained. Mr Hepburne Scott does however submit that the coronavirus pandemic and lockdown is a relevant part of the general context and is relevant when considering the circumstances outside the prison: the prospects and realities in relation to release to a society that is in lockdown, where families are staying together on lockdown and where flights and are not currently taking place.
8. I was asked to take account of all of these matters plus the various points in considerations that are referred to in the documents all of which I have read.
9. I am not prepared to grant bail in this case and the reasons are as follows.
10. The starting point is that this is not a case where the presumption in favour of bail applies as it does in some circumstances it in the context of extradition proceedings. As everybody rightly recognises that is not the case in the context of what is essentially a conviction-based European arrest warrant.
11. In my judgment, assessing the material before the court, there are substantial grounds for believing that the appellant would fail to surrender, notwithstanding the conditions that I have identified as candidates for appropriate imposition.
12. The case has this underlying nature: repeated offending with a serious series of offences which have led, according to the skeleton argument on behalf of the appellant, to what is currently an underserved custodial sentence in Poland of 4 years and 2 months less the remand period which will be applicable from 6 May 2019. The nature of the offending is relevant at as is the significant term of custody which the appellants stands to serve should he appellant be returned in these extradition proceedings, in the context of which he has an appeal with permission to appeal granted last month.
13. The various circumstances that are relied on so far as his lifestyle and life in the United Kingdom are concerned will of course all be highly relevant to any issue raised on the substantive appeal at it if an insofar as the court is considering article 8 ECHR arguments. I have to consider them through a different prism namely their implications for my assessment of whether there are substantial grounds for believing that the appellant would fail to surrender if released on bail pending the resolution of this extradition appeal.

14. I agree with the submission, on behalf of the respondent, of Mr Hoskins that a very weighty consideration in this case are the circumstances of what took place in 2006. What had happened was that the appellant serving a 5 year prison sentence and in Poland was temporarily released on 19 August 2005. The basis for that release was that he and his wife were having a child, their daughter then being born on 31 August 2005. In those circumstances the appellant, with his family circumstances including the birth of his daughter, had to decide what to do next. His return to custody date was 22 February 2006 namely the end of a 6 month period of release. He failed to return to custody on that date or afterwards. What he did, which in those circumstances that served to evade the Polish criminal process and the meeting of his responsibilities so far as a custodial sentence were concerned, was to leave Poland come to the United Kingdom in June 2006, on the face of it as a fugitive. Subsequent to that, his failure to return to the jurisdiction in Poland itself constituted further offending. As I have said he has been held, unsurprisingly, to be at a fugitive.
15. Those circumstances, in my judgment, combined with the underlying nature of the case, do weigh heavily in the balance and are sufficient, in all the circumstances, to lead me to the conclusion that there are substantial grounds for believing that the appellant would fail to surrender, even if the conditions were imposed. As to the circumstances so far as coronavirus is concerned do not undermine at that conclusion. For all those reasons at this application for bail is refused.

A handwritten signature in black ink, appearing to read "Michael R" with a stylized flourish underneath.

22 April 2020