Neutral Citation Number: [2020] EWHC 1583 (Admin)

Case No: CO/2109/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 June 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

MILOS MACZKOWSKI	**Applicant**
- and -	
CIRCUIT COURT IN GDANSK, POLAND	**Respondent**

- -
- -

Saoirse Townshend for the **applicant**
Tom Hoskins for the **respondent**

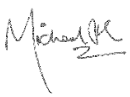
Hearing date: 17 June 2020

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(1A) of the Criminal Justice Act 1967, the magistrates court having previously withheld bail in extradition proceedings. I am looking at the bail merits afresh: see Tighe [2013] EWHC 3313 (Admin) at para 5. This remote hearing by telephone, and its start time, were listed in the cause list published online, with contact details for anyone wishing permission to join the hearing, as they have done. Counsel were able to address me in exactly the way that they would have done had we all been sitting in the court room. As always, I have asked myself whether, and I am satisfied that: this constituted a hearing in open court and the open justice principle has been secured; no party has been prejudiced by the mode of hearing; and insofar as there has been any restriction on a right or interest it is justified as necessary and proportionate.

2. The applicant is wanted for extradition to Poland. That is in conjunction with a conviction warrant, which relates to a sentence of 14 months custody. The period unserved is one year, one month and 29 days, less that the remand which will be relevant to the extent served in conjunction with these extradition proceedings. As at today the applicant has served some 4 months on remand. Bail has been refused by the magistrates on three separate occasions: 19 February 2020, 16 March 2020 and 20 April 2020.

3. The case for bail, as I see it, really comes to this. First of all, it is emphasised that the applicant has every incentive to engage with the extradition proceedings and to comply, including every incentive if he is released on bail. Reliance is placed on the hope of success that he has and the strength of the grounds that are able to be put forward on his behalf. I am reminded that there is an issue as to whether the requirement of 'judicial authority' is met in these cases. I am told that the current prognosis is that that is likely not to be determined until the end of this year. Ms Townshend submits therefore that, even if the applicant were unsuccessful before the district judge, at a hearing currently scheduled for 7 July 2020 but which may or may not then be adjourned, and were he then to appeal, his case would be likely to be stayed behind those proceedings awaiting resolution at the end of this year. She also relies on the article 8 arguments that which will be invoked in resisting extradition. In relation to that two features are particularly emphasised, alongside the fact that the applicant has been in the UK since 2003 when he was aged 10. One feature that is emphasised is the relevance of remand that is served. Reference was made to the impact were there an ongoing period of remand through to the end of the year and the impact that that might have on extradition discharge and article 8 arguments, as it gets to the halfway point of the 14 months, and were it to get near to the 14 months. Ms Townshend, on reflection, accepts that the 'paradox' of that is this: the premise of that is that he would remain on remand, not released on bail. She therefore relies on the 4 months already served, so far as any incentive were he released on bail is concerned. The other feature relates to the power in Poland, reflected in evidence before me, as to release during the Covid-19 pandemic of sentenced individuals on electronic tag.

4. Reliance is also placed on the fact that the applicant strenuously denies that he committed the offences in Poland and says: it wasn't him; that he wasn't there; that he was in the United Kingdom. Everybody accepts that the extradition court will not decide that issue: it is for the Polish courts. It was accepted, for the purposes of consideration of bail by me, that it is appropriate to take the documents from the

Polish judicial authorities – and their maintenance of the position that they relate to this applicant – at their face value, absent any evidence which would serve to refute that on grounds of identity. Ms Townshend realistically and rightly accepts that there is no evidence of that kind before me. She also relies on the lapse of time since previous incidents of failure to surrender, the fact that the applicant has been in custody for an extended period of time, and the impact of that in focusing his mind, when put alongside what she says are his incentives if released to pursue his resistance to extradition in a compliant way. She relies on the fact that he has been successful so far in resisting deportation proceedings, and she relies on the ties that he has to the United Kingdom in the 17 years that he has been here.

5. The other key topic, as I see it, in relation to the case for bail concerns the package of proposed bail conditions. What is put forward is that the applicant would go to what is described as a loving and stable family home, with strong family support. There would be the usual conditions including the continued surrender of a passport which would make it difficult if not impossible, it is said, for him to travel abroad. There would be a stringent electronically-monitored curfew. The family support extends to a job opportunity that that has been offered by the applicants mother's partner, his stepfather. I have evidence from the mother who tells me in her evidence that the £1,000 that is put forward as a bail condition is put forward in times of real financial difficulty for her and for the family, and that it constitutes all that she can afford in the current circumstances.

6. I have read with care her witness statement, which describes the position from her perspective and the support that she wishes and seeks to offer, in order to allay any concerns the court would have. I say straightaway that I accept her evidence and take it at face value. I accept that the £1,000 it is a very substantial sum and constitutes all that she can afford in the current circumstances. I accept that, from her perspective, she is fully supportive. I also proceed on the basis that what I am told in a proof of evidence from the applicant, namely that his mother had encouraged him to hand himself in, reflects and can be taken to reflect – in the absence of any contradictory evidence – that what that means is that in September 2017 the applicant came to be arrested in circumstances at least where his mother was encouraging him to hand himself in. Indeed, I am prepared to assume, for the purposes of my assessment, that he did in fact hand himself. I am therefore approaching the case on that basis. I also want to make clear that nothing in the assessment I have reached turns of the amount of money that the family have been able to identify.

7. Bail is resisted in this case on the grounds that there are substantial grounds for believing that if released and on these conditions, or any other conditions designed by the court, the applicant would either fail to surrender or – as a freestanding basis – would commit further offences.

8. I have reached the conclusion, considering the matter afresh, and on the basis of all the evidence, that there are substantial grounds for believing that – if released and notwithstanding the conditions – the applicant would fail to surrender. I do not rely on the additional basis as to offending. The conclusion in relation to failure to surrender is, in my judgment, a sufficient indeed a very strong basis on which bail falls be refused in this case. I am going to explain my reasons as to why I have arrived at that assessment on all the evidence.

9. The starting point is that this is a conviction warrant case. There is therefore no presumption in favour of the grant of bail. I take into account the nature of the offences to which the conviction warrant relates. I have already said that it is accepted, on both sides, that it is appropriate to rely on the documents from the respondent judicial authority on their face, including the judicial authority's insistence that there is no mistaken identity in this case. Those offences include dishonesty, in a position of trust, as a courier stealing money from parcels in April 2016; and a further offence of dishonesty in giving false testimony in alleging being the victim of a robbery. The sentence of 14 months is a significant one at and, if released on bail today, notwithstanding the 4 months served on remand that would be a substantial custodial sentence being faced by the applicant.

10. Focusing on what is known about the applicant in relation to events in the United Kingdom, what I find in this case is the following. First, he failed to surrender in October 2014 when he had been released on bail and bail conditions including, he says, the surrender of his passport. That failure to surrender, in breach of bail, was subsequently the subject of a sentence within the United Kingdom criminal system in November 2014, albeit no separate penalty was imposed. So that was the first failure to surrender, in breach of bail conditions. Next, on 19 February 2015 the applicant failed to surrender in breach of bail conditions. That is again a matter of record in that he was subsequently sentenced in April 2016 to an additional day's custody (but concurrent), in his absence, for that breach of bail conditions. Next, on 13 January 2016 the applicant absented himself from a Crown court trial that had started on 11 January 2016. I am satisfied, on the materials, that that is what happened. He himself describes himself as having absconded from criminal proceedings. Those proceedings related to a robbery in October 2014. That absence mid-trial, in breach of conditions that had been imposed on him, and failing to appear at his trial, led to the issuing of an arrest warrant on 19 January 2016. I pause to emphasise that all of these incidents were examples of failures by him notwithstanding any position so far as the his extended family or close family were concerned. What happened next was that he remained unlawfully at large for some 20 months, evading the United Kingdom proceedings, from January 2016 through to his arrest on 27 September 2017. By then he had been convicted in his absence of the robbery and he had been sentenced to 5 years imprisonment. He has been detained ever since. That is because he began his 5 year sentence in September 2017 and, at the culmination of that sentence, has been detained on remand in conjunction with these extradition proceedings. The contentions made, about him 'having faith in the United Kingdom system' and the support for him, including accepting as I am prepared to do that he handed himself in having been unlawfully at large for 20 months in September 2017, has to be put alongside this catalogue of examples of the applicant being entrusted with a release on bail, on conditions requiring compliance, and then failing to adhere to those conditions. If there were nothing else in this case other than that sequence of events, it would in my judgment be sufficient to conclude that there are substantial grounds for believing that he will once again fail to surrender, were he to be bailed by me on conditions today. That is the conclusion I would have reached notwithstanding everything that has been said on his behalf by his mother and by Ms Townshend. However, there is more to the case than that.

11. Once it is accepted that this court really has to give appropriate respect and weight for the position adopted in the documents by the respondent judicial authority, I then have

the position in Poland. What is said comes to this. Having absented himself from his January 2016 crown court trial here in the UK, he goes – and is able to go – to Poland. By April 2016 he is working as a courier. He then makes a false robbery claim and steals amounts which are the equivalent of £200 and £550 from courier parcels with which he is entrusted. He is detained and questioned. He is then released in connection with those Polish criminal proceedings. What happens next is that he absconds from those proceedings, so that he is then tried and convicted in his absence of those offences. I bear in mind that he protests: that that wasn't him; that he had no passport and couldn't get to Poland having surrendered it back in 2014; that he didn't go to Poland; that he couldn't even drive and couldn't have been a courier (only passing his driving test in September 2017); and that he had lost his Polish identity card (and, he says, reported it to the police and got a reference number) back in 2015. I am not, as I have said, able to make any finding in his favour on any of this. I am quite satisfied that it is appropriate to proceed on the basis of giving the documentation and the position of the respondent appropriate weight, for the purposes of assessing risk. On the face of it, the applicant was on the run from the British authorities from 13 January 2016, was then on the run from the Polish authorities from about 25 April 2016; and there is a symmetry in relation to release on bail conditions and failure then to appear; indeed, there is a symmetry in relation to exiting the country having been called to account for criminal offences. It would mean, on the face of it, that he did get to Poland notwithstanding that he says he was the subject of UK bail conditions that involved the surrender of a passport, and notwithstanding that he says he had no identity document. It would mean that he did get back to the United Kingdom from Poland notwithstanding the conditions that had been imposed on him by the Polish authorities. All of that is relevant when I come to consider, as I have to do, the risks were he released on bail today, and the extent to which the conditions that are put forward allay the concerns that I have.

12. I turn to the conditions, the electronically-monitored curfew in particular, the financial security and what that would mean for the family were he to abscond and that money be lost, and the restrictions in relation to passport act and other restrictions designed to prevent travel. I have considered all of those, but they do not allay the concerns that I have, in the circumstances of this case, that that I have described. I also have in mind that – notwithstanding the evidence that I accept from the applicant's mother and even taking that she succeeded in September 2017 in persuading him on that occasion to hand himself in – the strength of the support, no doubt I am satisfied put forward in good faith, has not proved in the overall pattern of the applicant's life to be sufficient and I cannot be satisfied that it would be enough to dissuade him from, once again, deciding to take steps to fail to surrender and to evade an ongoing process. I will also just add that this cannot really be said to be a case where the applicant is returning to life in a family unit, in circumstances where he was evading the authorities over a 20 month period and has been in custody since September 2017, but in the event nothing turns on that particular concern. I said near the start of this ruling, and I repeat, it is not a question of how much money the family have been able to gather together and put forward as a security. Conditions have not worked in the past when the applicant has been released on bail conditions. In all the circumstances of this case I simply cannot be satisfied that they would allay my concerns about the abscond risk.

13. I have borne in mind all of the points that have been put forward, including the points about the incentives from the applicant's perspective. But, on the face of it, he is

facing extradition to serve the balance of a 14 month custodial sentence and – as has to be the premise – were he released on bail, he would have a four-month period that is relevant so far as remand credit is concerned. I have referred in both counsel recognised this to the 'paradox' so far as the ongoing remand is concerned. I will just say something about that. The remand credit point could lead an extradition court, at the halfway point that is to say 7 months, to take into account the Polish authorities' half-way release discretion, as I understand it, as a factor in the evaluation of article 8 proportionality. In answer to a question from me, Ms Townshend says that, were this case to reach the the point that the applicant had served 14 months on remand, then the extradition consequence is that he would be discharged and he would no longer be facing any extradition. He has, as of course he is perfectly entitled to do, sought to obtain bail.

14. Liberty of the individual is a fundamental constitutional right and all courts consider with great care and scrutiny the basis on which people are deprived of their liberty. Ultimately, I have had to consider afresh for myself the same issue which the various district judges decided earlier this year. For the reasons that I have given, in my judgment there are substantial grounds for believing that if released on these bail conditions the applicant would fail to surrender. It is for that reason and on that basis that I refuse the application for bail.

17 June 2020