



Neutral Citation Number: [2024] EWHC 1359 (Admin)

Case No: AC-2024-LON-001679

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LONDON

Wednesday 5th June 2024

Before:
FORDHAM J

Between:
LUKASZ RATAJEWSKI **Appellant**
- and -
POLISH JUDICIAL AUTHORITY **Respondent**

David Perry KC and George Hepburne Scott (instructed by Bark & Co) for the **Appellant**
David Ball (instructed by CPS) for the **Respondent**

Hearing date: 5.6.24

Judgment as delivered in open court at the hearing

Approved Judgment

FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

FORDHAM J:

Introduction

1. On this application, pursuant to section 22(1A) of the Criminal Justice Act 1967, the central question of substance with which the submissions have grappled – and I will be grappling – is this. On all the material before the Court, are there substantial grounds for believing that the Appellant, if released on bail on the bail conditions that are been put forward, would fail to surrender to custody? I say the central question of “substance”, because there is also a question as to jurisdiction.
2. This central question of substance has been addressed in Westminster Magistrates’ Court, initially by DJ McGarva on 18 January 2024 after the Appellant’s arrest earlier that day; then by DJ Minhas on 25 January 2024. It was then addressed in this Court, on a previous section 22(1A) application, by Farbey J on 7 February 2024. Each of these judges concluded, on the material before them, that there were substantial grounds for believing that, if released on the bail conditions put forward, the Appellant would fail to surrender to custody. A pre-release security has featured in this case. Originally, before DJ McGarva it was £60,000. It was £100,000 before DJ Minhas; as it is again before me. In between, it was £200,000 before Farbey J. Since this Court was last seized of the issue of bail – on 7 February 2024 – there have been further attempts in the Magistrates’ Court to obtain bail. These were unsuccessful before DSDJ Ikram on 5 April 2024 and DJ Tempia on 15 April 2024. Both of those judges reached the adverse view that there was no material change in circumstances to warrant consideration of bail again on the merits. The application to me today was first filed in this court on 17 May 2024. I have been assisted by careful, clear and comprehensive written and oral submissions by both parties.

Jurisdiction

3. The legal controversy relating to jurisdiction arose out of the Respondent’s concerns as to whether it could really be the case that another Judge of the High Court could be asked to revisit the bail merits afresh, after Farbey J’s refusal of bail; and, if so, as to whether the Appellant needed to cross some threshold as to material change of circumstances. This controversy is one which I last encountered in November 2021 in Kowalski v Poland [2021] EWHC 323 (see §7). The background to that case – previous refusals of bail including in the High Court – can be seen at §2. On that occasion, and again on this occasion, attention has primarily been focused on Schedule 1 Part 2A §3 of Schedule 1 to the Bail Act 1976. That provision avoids the language of “change of circumstances” or “new considerations placed before [the court]”, seen in s.5(6A)(6B) of the 1976 Act (inserted in 1982) in the context of a court certifying the hearing of full argument. Those two phrases can be traced back to the Divisional Court’s judgment in R v Slough Justices, ex p Duncan (1982) 75 Cr App R 384 (at 387), where the Court was considering repeat bail applications in a magistrates’ court. When (in 1988) Parliament amended the 1976 Act to insert the new Part 2A, different language was used (Part 2A §3): “At subsequent hearings the court need not hear argument as to fact or law which it has heard previously”. That stands alongside the previous provision (Part 2A §2) which confers on the incarcerated person an entitlement to advance an application notwithstanding that “the court” has previously “decided” at a “hearing” not to grant bail, which application can be supported “with any argument as to fact or law” that they “desire”, and “whether or not [they have] advanced that argument previously”.

4. One of the aspects of the jurisdictional conundrum, as it seems to me, is this. If Part 2A §3 were directly applicable to the High Court – as “the court” – then it is difficult to see why previous paragraph would not equally be applicable. On the face of it, that (Part 2A §2) would then give the requested person a statutory entitlement to a second bail consideration afresh, by the High Court. The High Court is “a court” dealing with bail in an extradition case (see s.4(2A)). Other aspects of the conundrum concern whether Part 2A is applicable to the High Court, directly or indirectly, or at all. That is especially problematic in a case which involves a conviction Extradition Arrest Warrant (the present case involves both a conviction and an accusation Extradition Arrest Warrant). Whether or not the legislative intention was for Schedule 1 to be generally applicable, the structure of s.4 is to bring Schedule 1 into the picture in relation to a person to whom s.4 applies, which it does to a person whose extradition is sought (s.4(2A)), unless they have been convicted (s.4(2B)). In the end, there was a healthy measure of agreement between Counsel on these matters. Mr Ball, on reflection, did not submit that there is any ‘hard-edged’ jurisdictional bar to this Court considering bail, including considering the bail merits afresh. As it seems to me, the highest it can be put is that the structure of Part 2A §3 operates in the High Court as an analogical reference-point. All Counsel accept that there must be a ‘control’ mechanism, to preclude repeat applications to the High Court for repeated reconsideration afresh of the merits of bail, in an attempt to elicit from a new Judge a different response to bail, from that which has previously been given. I am sure that is right. But, in my judgment, the control arises as an exercise by the High Court of its jurisdiction and powers; rather than by virtue of any jurisdictional bar, still less one with rigid criteria (even Part 2A §3 says “need not” rather than “shall not”).
5. For much the same reasons as I expressed in 2021 in the case of Kowalski, but in the particular circumstances of the present case, including the flow of evidence relating to the case and the impacts for everyone of the Appellant’s ongoing incarceration while remanded in custody, I consider it right in this case to address the substantive question of the bail merits head-on. As in Kowalski, so too in the circumstances of the present case, I would be deeply uneasy to have an outcome where this Court at this oral hearing would have concluded that there were no substantial grounds for believing that the Appellant would fail to surrender; and yet bail would be refused. He would then remain incarcerated; and for what is now a prolonged period given that his substantive extradition hearing in Westminster Magistrates’ Court (previously scheduled for 3 May 2024) has been adjourned to 3 September 2024. Pragmatic it may be, in my judgment and in the present circumstances, it is also the principled response. I have put to one side the jurisdictional questions. I have focused straightforwardly on the bail merits. I record that it was no part of Mr Perry KC or Mr Hepburne Scott’s submissions in this case to criticise the way in which the matter has been dealt with in the Magistrates’ Court on 5 and 15 April 2024. Their focus was squarely on the way in which I should deal with the matter, today. I do not need to analyse further the position at the level of the Magistrates’ Court and I should not be taken to be expressing any criticism

Materials

6. I considered all the material that has been put forward in this case. I am also aware of the nature of the material that was put forward previously to Farbey J in February. Among the materials, I have a proof of evidence (22.1.24) and an addendum proof of evidence (27.3.24) from the Appellant’s partner (who had originally submitted a brief addendum for Farbey J dated 6.2.24). I have a significant number – more than a dozen – of recent

letters which are character references for the Appellant, written by those who know him or are associated with him. The two most recent bail hearings in the Magistrates' Court had a draft (3.4.24) of what is now finalised expert report (25.4.24) by Dr Tim Green which addresses the impacts of the Appellant's ongoing incarceration for all three members of this family. There is the Appellant himself (who is 47); his 39 year-old partner; and their 14 year-old daughter. I decided against the invited course of receiving oral evidence, at this hearing, from the partner. I was not satisfied in the circumstances, given the opportunities that have been provided and have been taken to give the Court an updated evidential picture, that there was justification for or need for hearing oral evidence with cross-examination; and nor did Mr Paul seek any opportunity to cross-examine.

My Function

7. As is common ground, I am in no position to make findings of fact today. That is not my function in considering the bail merits. Still less could it be appropriate, as Mr Perry KC emphasised, for me to seek to make findings which could cut across – in either direction – the fact-finding and evaluative functions that the Westminster Magistrates' Court will have, when that Court comes to consider the merits of the grounds of resistance to extradition at the hearing in September. I do, however, need to evaluate the material before me. But, in doing so, I am essentially assessing risk. I take into account matters that have been put forward by way of evidence. I also have regard to matters that have been advanced by way of submission.

The Extradition Arrest Warrants

8. The conviction Extradition Arrest Warrant in this case was issued on 13 June 2011. It relates to a conviction aged 26 in December 2003 in Poland. That is for an offence of unlicensed possession of a firearm, committed aged 25 in August 2002. The Appellant continues to maintain his innocence in relation to that matter. The accusation Extradition Arrest Warrants was issued on 9 July 2012, the Appellant having been indicted in Poland in January 2012, in relation to 12 criminal offences alleged against him. That number has effectively reduced down from 12 to 8, in circumstances where it was apparent – and has been confirmed – that 4 of the matters involved expired limitation periods. The 8 matters that are left involve allegations against the Appellant between 1997 and 2003, of offences allegedly committed in Poland between the ages of 20 and 26.
9. This is therefore a 'hybrid' case where there is both a conviction and an accusation Extradition Arrest Warrant. That is capable of producing another legal conundrum. That is because accusation Extradition Arrest Warrants attract the statutory presumption in favour of the grant of bail; whereas conviction Extradition Arrest Warrants attract no such statutory presumption. It is a little difficult to see how the position as to a presumption can operate in two directions, in play in the same evaluation of the overall merits of bail. Again possibly pragmatically, the approach which I take is to put to one side presumptions and consider the merits as they stand without the influence of a presumption, in either direction. But I can say this. Having approached consideration of the matter in that way, nothing would turn on where any presumption were placed.
10. The Case for Bail

11. Mr Perry KC and Mr Hepburne Scott emphasise the following features of the case in particular, in support of the grant of bail.
- i) The Appellant has, in the UK, now a full 20 years of community ties since 2004. He has the strong character reference support evidenced by the letters. He has established strong and legitimate business interest on various fronts in this country, through industry and commitment and with notable success. He had the durable relationship of ongoing support from the partner of 20 years who joined him here (as a 20 year old), shortly after his own arrival from Poland, to start their life here together. They have the 14 year-old daughter to whom they are devoted. She was born here in 2009 and her only life has been known here. This is where she has her friends, her private and family life, and where she is attending a private school. There is the family home here with its mortgage. There is the seriously detrimental effect of the Appellant's ongoing incarceration, for all 3 of them, which has been assessed in Dr Green's expert report. There is the impact and the implications of all of that, when seen from the perspective of the Appellant, with the impact and implications on the one hand of his being able to return to the family home to be with them and support them; and the impact and implications on the other hand of the suggestion about him seeking to abscond, whether with or without them.
 - ii) Strong emphasis is placed on the fact that the Appellant has every incentive to "face the reality" – as it is put – of these criminal matters in Poland, and these extradition proceedings; "come what may". That means addressing the position by defending the hearing in September with what Mr Perry KC characterises as a "very powerful" Article 8 case based, in particular, on the position of the daughter; but also points which will relate to the passage of time and arguments under section 14; and all other points that can properly be advanced. This is all in circumstances, moreover, where the Appellant has instructed lawyers in Poland to advance his interests there.
 - iii) There is the explanation put forward for the Appellant having left Poland in 2004, and for the identity he then assumed in this country and has maintained here. This is characterised as having been based on self-protection, with a well-founded fear to life and limb in the light of previous association with a criminal organisation in Poland. Alongside that, emphasis is placed on the evidence of an "industrious commitment to rehabilitation" over the last 20 years. Reliance is also placed, in the submissions, on a contention that the Appellant was aware of enquiries in the run up to his arrest but did not abscond.
 - iv) Most of all, the "key point" emphasised concerns the "catastrophic" consequences were the Appellant to fail to surrender; the unthinkable effects of the loss of everything that he has worked to establish in the UK; the callous and cruel impacts that that would mean for the partner; and for the daughter to whom both parents are devoted, and for whom the Appellant is determined to achieve the best possible present and future. There is the complete absence of any third country which is identifiable to which he or they could go; or of the means of getting there. There is the unrealistic prospect that the Appellant: (a) would leave the partner and daughter behind, leaving his business interests on which their welfare depends to fold; or alternatively (b) that he would be in a position to take them with him, or would choose to do so given the impacts for them of being wrenched from their lives here. All in all, it is said that the Appellant should be now free from the detrimental

impacts of his ongoing incarceration. He should now be allowed to put his business affairs into order, and reunited with his partner and daughter so that he can leave his business in good hands, should he need to be extradited. He should be on bail, to deal head-on with the extradition proceedings.

My Assessment

12. Having assessed the risks, and notwithstanding all of those points put forward on the Appellant's behalf, I have come to the conclusion that there are substantial grounds for believing that – if released on bail and notwithstanding the bail conditions – the Appellant would fail to surrender. I accept the submissions of Mr Ball. I will explain the reasons that have led me to that conclusion.
 - i) The starting point, in my assessment, is the Appellant's action (then aged 26) when he, and then his partner (aged 20), left Poland in 2004. On the materials that are before me that that was action which they took in the following circumstances. The Appellant had been tried in a criminal court and then sentenced, in his presence, in December 2003 to a three-year prison sentence relating to the firearms possession offence. What happened next was that an appeal was launched. It ultimately failed and the conviction and sentence became final in June 2004. On the face of the materials, the action of leaving Poland was following the conviction and sentence, and being fully aware of it, and while that appeal was pending. Assessing risk, on the basis of the materials on the face of them, that was the avoidance of accountability in relation to the conviction matter; rather than staying to fight the appeal process and face responsibility. It was action which involved crossing borders. It involved going to completely new country with which there was no connection. It involved starting a life from scratch. Moreover, it was action, avoiding serving a sentence, which I have to put alongside the narrative that I have been given in the materials: about escaping Poland so as to “break ties” with the criminal gang; and doing so in the context of what are said to be serious risks of danger to life and limb. This aspect of the case, in my assessment, is a matter of serious concern when I am considering risk.
 - ii) Next, there is the fact that – in the course of that action in 2004 and during the entirety of the 20 years since then – the Appellant has been in the United Kingdom under a false name (Dariusz Plazewski). He acquired a false identity document. He changed his name to match the name of that other individual. It is in his false name that all of his friends and associates, who have written the various character references, have come to know him. Again, assessing risk on the basis of the position on the face of it, this was continuing conduct after leaving Poland, taken in the avoidance of accountability, by way of dishonest deception. It is a dishonest deception which has continued for 20 years, up to the time of the arrest in January of this year. It was also a situation known to the partner. She had known the Appellant and his true identity back in Poland. Again, there is a narrative which has been presented to this Court which I have had to consider. The narrative is that the identity document that was false have been obtained from a “friend” to whom the appellant had explained he was in “imminent danger”. It is that the continuance of the false identity over 20 years in this country has been borne out of concerns for “personal safety” of the Appellant and the members of the family. That narrative appears strongly to have featured in the case for bail was put to Farbey J. In her reasons, she records that notwithstanding that she was shown materials to

which the Appellant's proof of evidence had referred, which were communications in recent years, she was not satisfied that those materials were evidence of a "threat to life". On the contrary she recorded a concern as to whether the Appellant was, in relying on this material, someone who was willing to seek to deceive the Court. As to this idea of ongoing threats to life and limb – which as Mr Ball points out would raise concerns on their own – it is difficult, in my assessment, to square these with the idea expressed in the evidence that there was a sense of "relief" from the Appellant's true identity having come to light earlier this year. There is another theme in the narrative. It is the idea of the Appellant being blackmailed and making payments to those who were aware of the Appellant's true identity and in a position to threaten to expose it. That raises a set of other concerns. Those concerns really come down, in my assessment, to this. It would involve a willingness on the Appellant's part to make payments, to former associates including in recent years, to achieve the maintaining of a false identity.

- iii) I have referred to the submission made about the Appellant's awareness of pursuit by the authorities and yet his choice not to abscond when the opportunity presented itself. In assessing risk on the materials before me, there are real difficulties with that description. It was not included in any previous material, prior to the very recent skeleton argument. There is the Appellant's own proof of evidence which, twice, addresses the topic of his not having previously absconded. But on each occasion, he is describing the contact in recent years from associates who he says were writing him the threatening letters. His evidence is that had intended to abscond he could have done so "when they first located me"; "long ago". The fact is that he was successful in continuing to maintain his identity in this country until very recently. I am not able to place any strong weight on this particular aspect – about awareness of recent pursuit – but nor in my assessment could it tip the balance, in light of the other serious concerns that I am identifying.
- iv) Next, there is the fact that the position is now known by the Appellant to be far more serious than it was when he was leaving Poland in 2004 in the face of his three-year criminal sentence and then maintaining his false identity in this country. That is because of the January 2012 indictment which led to the accusation Extradition Arrest Warrant in July 2012, on which he was ultimately arrested on 18 January 2024. Notwithstanding the 4 matters that have fallen away because of limitation periods, there are left a series of 8 extremely serious alleged crimes committed by the Appellant. As Mr Ball understandably emphasises in his written submissions, the first of the 8 involves the Appellant's participation in 1997 (aged 20) in a conspiracy intending to kill a named individual, in which the Appellant is named as having supplied to the principal offender an AK-47 weapon and ammunition, wearing a disguise, and driving the would-be killer to the location of the intended murder where there was no good shooting opportunity so the planned murder was abandoned. The 7 other matters include allegations of drug trafficking including two counts relating to drug trafficking in prisons. There are also allegations of extortion and robbery. These serious matters are allegations. But they are matters which the Appellant now knows that he faces by way of trial were he extradited to Poland. They serve to increase the concerns that arise so far as absconding is concerned. They also materially affect the picture as he will perceive it when considering the options that are open to him.

- v) Next, there is, in my assessment, a significant risk of a perceived fragility so far as the Appellant's ability successfully to resist extradition at the September 2024 hearing is concerned. I repeat a point that I emphasised earlier: I am not making any observation which in any way is intended to cut across the consideration of the merits by the Westminster Magistrates' Court, or on any further consideration which may arise. All questions are open, and I am deciding none of them. But in assessing the risk there is, in my judgment, the very serious prospect of a perceived fragility so far as concerns the 'option' of successfully resisting extradition by fighting the matter in court. I accept without hesitation that remaining with the family and taking that course, with the assistance of his legal representatives, is one clear option open to the Appellant. I also accept without hesitation the significance in practical terms of the idea of his putting his affairs in order. However, assessing risk from the perspective of his 'options', there are the two other possible outcomes. One is that extradition is unsuccessfully resisted, and the Appellant is then removed Poland to face responsibility for the conviction matter, and the accusation matters, or any combination of them; with all the impacts and consequences that that would have. The third possible outcome is the prospect with which I am directly concerned, namely failure to surrender and steps to seek to abscond to avoid responsibility, whether without or with the other family members. I must also have in mind that, from the perspective of getting his affairs in order, I need to assess the risk not only of an immediate failure to surrender but also of a failure to surrender at a subsequent stage, prior to the September 2024 hearing. That is important because it would present an option involving putting his affairs in order, and yet the failure to surrender with which I am concerned.
- vi) Finally, all of these matters arise unmistakably in the context of an individual who has – on the face of the materials – a resolve and a resourcefulness. That is together with the very real prospect of associations which could assist him, just as they did when he was able in 2004 to obtain a false identity document and build a new beginning from scratch in a completely new country.
13. The nature of my concerns is such that the proposed bail conditions do not and cannot allay them. I want to emphasise that my decision would have been the same if the £200,000 pre-release security that was before Farbey J had been before me. My concerns, moreover, are not a function of questions relating to the provenance of pre-release security. But having considered the matter afresh, with the great assistance of the submissions on both sides, I have in the event arrived at the same conclusion as did Farbey J on 7 February 2024.

End-Note

14. Nothing turns on it, but I will record the following, for transparency. Had it mattered, to the exercise of my jurisdiction and powers, to evaluate whether the "arguments as to fact or law" were the same as were "heard previously" by Farbey J (1971 Act Sch 1 Part 2A §3), I would have accepted that the nature of the materials before the Court today are sufficiently distinct to warrant considering the bail merits afresh. I would have been assisted, by analogy, by the approach of the Divisional Court to the "sufficient" difference in R v Blyth Juvenile Court, ex p G [1991] Crim LR 693. But I want, equally in the interests of transparency, to make clear that even that conclusion would I think have been influenced by the concern I recorded earlier: about the prospects of the Appellant remaining incarcerated, with the impacts for all three members of the family,

for 'jurisdictional' reasons, in circumstances where my view of the materials is that I would have found in his favour on the bail merits. That, however, is not the position for the reasons that I have explained. Bail is refused.