

Neutral Citation No: [2023] NIKB 99

Ref: HUM12294

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 06/09/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

**IN THE MATTER OF AN APPLICATION BY
KEVIN BARRY MURPHY FOR BAIL**

**Mr Karl McGuckin (instructed by Phoenix Law) for the Applicant
Ms Natalie Pinkerton (instructed by the PPS) for the PPS**

HUMPHREYS J

Introduction

[1] The applicant is Kevin Barry Murphy, a 53-year-old man who faces the following charges:

- (i) Directing terrorism;
- (ii) Possession of an article likely to be used in terrorism;
- (iii) Membership of a proscribed organisation;
- (iv) Conspiracy to direct terrorism x2; and
- (v) Preparation of terrorist acts x2.

[2] The applicant was arrested on 18 August 2020 and has been remanded in custody since that date. He has therefore spent over three years on remand, and this is his first full application for bail.

[3] Committal proceedings have been ongoing before District Judge Ranaghan. The evidence in those has concluded and legal issues remain to be determined. Once those rulings have been made, the District Judge will decide whether or not to return the applicant and his co-accused for trial.

Bail - The Principles

[4] Every suspect in a criminal investigation is entitled to both the presumption of innocence and a presumption in favour of bail. In order for the detention of a suspect in custody to be lawful, it is necessary for the prosecution to establish a prima facie case that the individual is guilty of the offence(s) charged. As McCollum LJ stated in *Re Maguaid's Application* [2000] NIJB 282:

“At this stage the prosecution does not have to prove the guilt of the accused. Its duty is to establish sufficient facts to show the existence of reasonable suspicion that the applicant has committed the offence in question together with such circumstances which would provide justification for his/her being detained in custody.”

[5] This position is confirmed by article 5 of the ECHR which establishes the right to liberty of the person. In *McKay v UK* (2007) 44 EHRR the Grand Chamber confirmed that the domestic courts must have the power to review the legality of detention.

[6] Where reasonable suspicion has been established, the presumption in favour of bail may be rebutted where there are substantial grounds to believe that, if released, he will:

- (i) Commit further offences;
- (ii) Abscond or not turn up for trial; or
- (iii) Interfere with the course of justice.

The Circumstances of the Alleged Offending

[7] The prosecution case rests squarely on video and audio surveillance evidence which it has obtained from three meetings which took place in February, June and July 2020 and which are said to have involved the leadership of the 'New IRA.'

[8] It is alleged that the applicant was present at two meetings, on 9 February and 19 July 2020. The first of these meetings took place at Sixmilecross in Co. Tyrone at which the applicant was described as the Chief of Staff of the New IRA and therefore a member of its seven strong Army Council. Discussions took place about the constitution of the organisation, its future direction and make up, interaction with other Republican groups and the acquisition of weaponry.

[9] The meeting in July 2020 took place at Gortin near Omagh. DNA evidence taken from a swab of a bathroom handle at the premises is said to identify the

applicant. High level strategic decisions were discussed as well as weapons, the international dimension and internal security.

[10] For the purposes of this application, the court need not consider or adjudicate upon the admissibility or reliability of the evidence which the prosecution will seek to adduce at trial in the event the applicant is returned. Suffice to say that the threshold of establishing reasonable suspicion, or a prima facie case, has been met for the purposes of this application.

Criminal Record

[12] The applicant has some 41 previous convictions, the majority of which are in respect of road traffic offences. There is one conviction of direct relevance, for possessing items for terrorist purposes in June 1992 for which he received a prison sentence of 2 years and 6 months. The prosecution say that this represents evidence that the applicant is a career terrorist whilst the applicant's representatives point, entirely reasonably, to the fact that he has no convictions for any terrorist related activity for almost 30 years.

The Application

[13] The applicant seeks to be remanded on bail to his home address and has indicated that he will comply with stringent conditions. There are also available significant cash securities totalling some £22,000 from members of the local community.

[14] The personal circumstances of the applicant are, of course, a relevant factor in any bail application. In December 2022 and January 2023 his two grandchildren passed away and this has undoubtedly caused significant trauma to the family. It is said on his behalf that the wellbeing of his family, particularly his daughter, is the applicant's principal focus at this time.

[15] The applicant was admitted to compassionate bail on two separate occasions to attend the funerals of his grandchildren and complied fully with the bail conditions imposed on those occasions.

Judicial Consistency

[16] Reliance is placed on the fact that three co-accused have been admitted to bail. Patrick McDavid was released on bail in November 2021 following a disavowal of violence and in circumstances where Raymond McCartney, a prominent elected representative, provided a cash security of £50,000.

[17] Issam Bassalat was admitted to bail following significant health issues. Joseph Barr was released following a disavowal of violence and in light of a

significant cash security provided by his parents. All the other co-accused remain in custody.

[18] The admission of a co-accused to bail is, of course, an important factor for a court to take into account. However, each application must be considered on its own merits and in light of the particular individual circumstances which prevail in any given case.

The Passage of Time

[19] Article 5(1) of ECHR provides:

“Everyone has the right to liberty and security of the person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law...

- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.”

[20] Article 5(3) states:

“Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article...shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

[21] In *Clooth v Belgium*, the ECtHR acknowledged that the seriousness of a charge may lead judicial authorities to remand a suspect in custody to prevent further offences being committed. Such a danger must be assessed as a plausible one and the measure appropriate in light of the circumstances of the case and the personality of the person concerned [para 40].

[22] In *Idalov v Russia* the Grand Chamber stated:

“140. The existence and persistence of a reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the lawfulness of the continued detention. However, after a certain lapse of time it no longer suffices. In such cases, the Court must

establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds are 'relevant' and 'sufficient', the Court must also ascertain whether the competent national authorities displayed 'special diligence' in the conduct of the proceedings (see *Labita*, cited above, §§ 152 and 153). Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v Bulgaria*, no. 38822/97, § 66, ECHR 2003-I). When deciding whether a person should be released or detained, the authorities are obliged to consider alternative measures of ensuring his appearance at trial."

[23] The Strasbourg jurisprudence also makes it clear that 'special diligence' can take account of the complexity and characteristics of the investigation.

[24] In this case, the prosecution say that it was ready to proceed with committal proceedings in August 2021. Due to the volume and nature of the evidential material involved, the defendants sought an adjournment. They have also exercised their statutory right to challenge the evidential basis for a return for trial through the mixed committal process. This has been a complex and challenging hearing conducted before the District Judge since October 2022. I am satisfied, on the basis of the evidence, that there has been no culpable delay on the part of either the prosecution or the defendants.

[25] I am informed that the final stage of the committal process will take place in the coming weeks as legal issues are ruled upon and a final determination made.

The Prosecution Objections

[26] The prosecution object to the grant of bail on the grounds of the risk of reoffending, the risk of absconding and interference with the course of justice.

[27] In respect of the commission of further offences, it is stressed that the evidence demonstrates the applicant's unwavering commitment to the ideology of violent republicanism. There is prima facie evidence that the New IRA is under the control of a group of individuals which includes the applicant. The discussions which are the subject of the surveillance recordings point to an intention to escalate a campaign of violence and with the engagement of international organisations to further its goals.

[28] In February 2023 DCI John Caldwell was shot in Omagh and the New IRA claimed responsibility in a statement which included an explicit threat to all 'Crown force personnel.' This demonstrated not only the capability but also the intent of dissident organisations.

[29] In a recent bail application on behalf of a co-accused, Amanda Duffy, O'Hara J stated:

“Dissident republicans are extremely active and dangerous at present. They are clearly determined to kill, maim and terrorise...Those who lead them, join them and co-operate with them must understand that by doing so they engage in activity which has consequences. One of those consequences is loss of liberty, whether short term or long term.”

[30] In light of the evidence and submissions, I am satisfied that there is a real and grave risk of further offences being committed if the applicant were to be released on bail. I derive this conclusion principally from the nature of the activities which were the subject of the surveillance operations. This does not mean that the entitlement to bail is subject to the gravity of the charges but rather recognises that the court can, and should, take into account the circumstances of the alleged offending in arriving at its assessment of risk.

[31] The prosecution also say that the applicant presents a risk of absconding. This is based partly on the seriousness of the charges – it is argued that this is likely to incentivise the applicant to decide not to surrender to bail. Reliance is also placed on other dissident republicans who have left the jurisdiction whilst on bail.

[32] There is nothing in this applicant's background to support a specific allegation of flight risk. He has strong family ties in this jurisdiction and has not sought to abscond in the past. In *Becciev v Moldova* the ECtHR made it clear that the risk must be assessed by reference to the personal characteristics of the applicant rather than merely through generic assertions. I am not satisfied in this case that evidence of a flight risk has been established by the prosecution.

[33] The third ground of objection relates to the potential for interference with the course of justice. There is no suggestion that this applicant would intimidate witnesses in light of the nature of the prosecution case but, generally, it is asserted that he may facilitate the co-ordination of cases amongst the various accused. I am not satisfied that this risk has been made out on the evidence.

Bail Conditions

[34] In light of the established risk of reoffending, I turn to consider the question of whether suitable bail conditions can be imposed to mitigate against such risks.

[35] In *Re Coney's Application* [2012] NIQB 110 Maguire J commented:

“...where the risk is of the potential commission of serious offences, and where the risk arises within the context of the alleged operations of a dissident terrorist organisation, believed currently to be active in its pursuit of its purposes, it is difficult to see how bail conditions would limit or obviate the risk – at least to the extent that would enable the court to grant bail. In reaching this conclusion the court takes into account the sophistication of dissident terrorist groups and the roles which an individual may play in advancing the goals of such a group.”

[36] The imposition and enforcement of bail conditions is significantly more difficult when one is dealing with the controlling minds of terrorist organisations rather than those who are in the position of ‘foot soldiers.’ I am not satisfied that suitable conditions could be imposed in this case would satisfactorily mitigate against the risk which has been established.

Conclusion

[37] Recent evidence and activity confirms that dissident republicans remain committed to the use of violence to further political ends. The risks associated with the release of an alleged leader of one such organisation are both grave and obvious. I am satisfied that the circumstances of this case are materially different from those which prevailed in the successful bail applications on behalf of the co-accused.

[38] I am, however, conscious of the lengthy period which this applicant has spent on remand, but I have concluded that the risks presented by his release on bail are such as to outweigh his article 5 right and to justify his continued detention. The grounds for such detention are both relevant and sufficient and the prosecution has demonstrated the necessary level of special diligence in the conduct of the mixed committal process to date.

[39] I have reached this conclusion on being cognisant of the fact that the committal proceedings will soon conclude. If the District Judge is not satisfied that there is a case to answer, then he is obliged by statute to discharge the applicant. That would bring his detention to an end in a matter of some weeks. If, on the other hand, he is returned for trial it will be a matter for the Crown Court judge to assess the length of time it will take before the substantive trial can take place. In those circumstances, it would be appropriate to revisit the question of bail when the likely entire period of remand would be clearer. At the moment it would be pure speculation for me to address this issue and the imminent conclusion of the committal proceedings encourages me to the view that bail should be refused at the moment.

[40] For the reasons outlined, the application for bail is refused.

[41] I will order that the costs of the applicant be taxed as those of an assisted person.