



Neutral Citation Number : [2019] EWCA Civ 1574
Case No: A4/2019/2156(A)

IN THE COURT OF APPEAL (CIVIL DIVISION)

The Royal Courts of Justice
Strand, London, WC2A 2LL

Monday, 16 September 2019

Before:

LORD JUSTICE GREEN

Between:

LAKATAMIA SHIPPING COMPANY LIMITED

Respondent

- and -

SU

Applicant

Transcript of Epiq Europe Ltd, Lower Ground, 18-22 Furnival Street, London EC4A 1JS
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The **Applicant** appeared via video link assisted by a McKenzie Friend, **Mr McKendrick**

Mr Casey (instructed by **Leigh Day**) appeared on behalf of the **Respondent**

Judgment

(Approved)

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LORD JUSTICE GREEN:

1. There is before the court today an application for bail by Mr Nobu Su ("Mr Su"). On 29 March 2019 he was committed to prison for contempt of court and ordered to serve a determinate term of 21 months in custody. The order for committal was made by Sir Michael Burton sitting as a deputy High Court judge.
2. The background to the dispute can be summarised shortly as follows. Mr Su is in dispute with a company called Lakatamia Shipping Company Limited. The dispute concerns an unpaid judgment debt of approximately US\$37 million together with interest. In a judgment dated 27 March 2019, Sir Michael Burton found that Mr Su was guilty of numerous breaches of court orders relating to the case and attempts by Lakatamia Shipping to identify and secure assets belonging to Mr Su. The judge found that the breaches were deliberate and flagrant and, as observed, ordered Mr Su to serve a sentence of 21 months in prison. An appeal against that sentence is due to be heard on 24 September 2019, in other words, at the beginning of next week.
3. On 13 September 2019, that is to say, last Friday, the Court of Appeal office received a letter from Mr Su seeking bail. That letter was dated 11 September. The reasons for the application were said to be attributable to an incident occurring in the prison on 10 September. The relevant part of the letter states as follows:

"Yesterday I was threatened by four black prisoners to pay their legal fees in the shower room, asked £10,000 to pay others with threats by knife. I have been in prison almost six months. I cannot with fear and life danger waiting latest 24 September 2019 appeal hearing."

4. The letter was construed by the office as indicating a serious threat to the life and safety of Mr Su. Accordingly the matter came before me on paper for directions on Friday the 13th. Having reviewed the documents, I concluded as follows:
 - (1) That I was bound to take the threat to Mr Su's physical integrity seriously under Articles 2 and 3 of the European Convention on Human Rights.
 - (2) That accordingly it was the duty of the court immediately to contact the prison with a view to notifying them of the alleged threat so that they could take appropriate steps to contact Mr Su, perform a risk assessment and ensure his safety.
 - (3) That this duty on the part of the court overrode any other duty that the court had to protect the privacy of the correspondence passing between the court and Mr Su in relation to his appeal, which ordinarily includes keeping it confidential from prison authorities at least to some degree.
 - (4) Mr Su's letter was not in the proper form required by the Rules to amount to an application for bail. Notwithstanding, I directed that this informal letter should be treated as a formal application.

5. On that same afternoon, 13 September, the court contacted the prison, who responded quickly to perform a risk assessment. I have disclosed to the parties the key correspondence passing between the court and the prison. The key details are as follows. At 13.13 pm Ms Reshma Khanom wrote by email to Mr Richard Sarsby at Pentonville. The gist of the email was in the following terms:

"Mr Su has contacted the Civil Appeals Office requesting bail. He has alleged threats have been made to him. Mr Su has an appeal in the Court of Appeal, Civil Division, which is listed for hearing on 24 September 2019. The matter was passed to Lord Justice Green, who has directed that the court is to treat this as an application for urgent consideration of bail which is to be brought on as soon as possible. He directed the Civil Appeals Office to inform the prison of the threats and has asked that the prison make arrangements to be in a position to explain at the hearing what steps, if any, have been taken to secure Mr Su. Details of the threats referred to in Mr Su's letter dated 11 September 2019 to the Civil Appeals Office are as follows:

"Yesterday I was threatened by four black prisoners to pay their legal fees in the shower room, asked £10,000 to pay others with threats by knife ... I cannot with fear and life danger waiting latest 24 September 2019 appeal hearing."

6. Mr Su also says in that letter:

"I will tell key worker officers to move me or take solution".

It then stated:

"Please acknowledge receipt of this email and reply to the Civil Appeals Office urgently today. The court will then decide whether to list the application for bail this afternoon or early next week. Please also confirm who will be available to provide the explanation requested above to the court. The Civil Appeals Office will then be in touch to arrange a video link hearing."

7. That same afternoon, Mr Sarsby at 16.52 responded in the following terms:

"As discussed, I confirm that S. O. Abbass spoke to Mr Su this afternoon to conduct a welfare check. Mr Su informed S. O. Abbass that he had been threatened by two individuals on the 11th

and asked for payments to prevent injury to himself. The names of the individuals were given. However, there is no CCTV or other evidence to corroborate this. Therefore we are unable to take direct action against the alleged perpetrators at this time. Mr Su was offered a wing move, and this was accepted. However, he requested that he wanted it to take place on Monday and was content on the wing over the weekend. Based on that request, it is my assessment that there is no immediate risk to life. It seems Mr Su is not so concerned about his immediate safety, and I have no additional information to counter that view. This issue will be revisited on Monday with a further welfare check."

8. On 16 September, that is to say today, Mr McKendrick has appeared for Mr Su as his McKenzie friend. I permitted him to address the court in supplement to any submissions that Mr Su wished to make over the video link. Mr McKendrick has identified three points which he says are relevant to this application for bail. I summarise them as follows.
 - (1) Mr Su is unable properly to prepare for his appeal because of the severely limited communication facilities in Pentonville.
 - (2) If Mr Su did wish to come to some kind of an arrangement or agreement with solicitors for the respondent, he cannot make a proposal without proper access to his businesses to facilitate this, again by reason of the strict regulations operating in Pentonville, which he says are not suitable for civil contempt prisoners to be held in for a long period of time.
 - (3) Mr Su has been threatened with physical violence by other inmates in Pentonville, and he summarises the points that I have referred to already.
9. I turn now to deal with my conclusions on the various arguments which have been advanced before me today.
10. First, it follows from my brief recitation of the facts that the prison is fully informed and aware of the information provided to the court and has moreover followed this up with a fresh risk assessment. I am satisfied that the duty to preserve the safety of Mr Su is being properly observed by Pentonville Prison. There is nothing therefore to suggest that Mr Su is at risk or that, even if he is at risk, the prison is not in a position adequately to address it. There is therefore nothing which could justify considering the grant of bail based upon the physical safety of Mr Su.
11. Next, as to the points made by Mr Su over and above those concerning personal safety, and in particular the contended-for inability to prepare for the appeal, experience demonstrates that many prisoners do prepare for appeals from prison. This is routine for instance in relation to criminal appeals. There has in my view been ample time for Mr Su over the past few months to prepare his appeal. I am not satisfied that if Mr Su wished to settle this case and purge his contempt, he would not be able to do so. Mr Casey appearing for the respondent today points out that Mr Su has the benefit of public access counsel, who is in court today who has had access to relevant documents. On 13 December he lodged a skeleton on behalf of Mr Su, who is therefore assisted by qualified legal representatives.

12. Mr Su has contended today that the skeleton prepared for him was not approved by him. However, it is apparent that the grounds of appeal were approved by Mr Su and evidence to that effect is in the documentation before the court. The points advanced on the appeal are essentially procedural. Mr Casey says that the involvement of Mr Su personally is somewhat peripheral to those arguments. But, be that as it may, if and insofar as it is said that there are new points or new evidential matters which are relevant to the appeal, these are matters which the full court hearing the appeal next week can address. They are not in my view the sorts of arguments or matters which would justify the grant of bail. I would observe that although it is said that there is new evidence, there is no identification of what that evidence is or what it is relevant to.

13. There are a number of other matters that Mr Casey has set out in his skeleton argument, for example in relation to flight risk. It follows from my judgment that there is no need to deal with these.

14. At the end of the day, this application for bail does not succeed.

Order: Application refused

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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