

IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NOS 202302317/A1 & 202302331/A1

[2024] EWCA Crim 466

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 16 April 2024

Before:

LORD JUSTICE WARBY
MR JUSTICE SAINI
HER HONOUR JUDGE KARU
THE RECORDER OF SOUTHWARK
(Sitting as a Judge of the CACD)

REX
V
KAMALJIT SINGH CHAHAL
BHIPON CHAHAL

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MR P LEWIS KC appeared on behalf of the Applicant Kamaljit Chahal
MR B SINGH appeared on behalf of the Applicant Bhipon Chahal

J U D G M E N T
(Approved)

LORD JUSTICE WARBY:

1. Before the court today are two renewed applications for leave to appeal against sentence, following refusal by the single judge. The applicants are Kamaljit Chahal, aged 53, for whom Mr Lewis KC appears today, and Bhipon Chahal, aged 26, who is represented by Mr Singh. There was a third renewal by a co-defendant named Sandeep Johal but that was formally abandoned by a notice in writing received yesterday.
2. The case is one of conspiracy to supply controlled drugs on a scale beyond the top end of the Sentencing Council Guideline.
3. It arises from a national police operation called Operation Venetic. The facts, briefly summarised, are that decoding of encrypted messages on EncroChat disclosed the existence of an organised crime group ("OCG") that included the two applicants, Johal, and others that was involved in the supply of drugs in substantial quantities to lower level drug dealers throughout the East Midlands.
4. The conspiracy indicted lasted for some eight months, from 1 February 2020 to 23 September 2020. The EncroChat evidence showed that in one 14-week period within this overall timespan, that is between 26 March 2020 and 5 June of that same year, the OCG had supplied roughly 70 kilos of cocaine in kilogram and multi-kilogram quantities, as well as some 2.5 kilograms of heroin and 33 kilograms of cannabis. The EncroChat evidence also showed that during the relevant period the OCG had moved more than £1.6 million connected with the supply of drugs.
5. The applicant Kamaljit Chahal was the leader of the OCG. Bhipon Chahal, who is his nephew, worked closely with Kamaljit Chahal and also had a leading role in the sense that he was involved in the leading activities but he was below his uncle in the hierarchy. Both Kamaljit and Bhipon Chahal used EncroChat devices. Johal, to whom we have

referred, had a significant role acting as a courier but also having responsibility for collecting and delivering drugs and cash. The EncroChat and other evidence led to the arrest of the applicants, Johal and four others.

6. In proceedings brought in the Crown Court at Leicester, the applicants and Johal all pleaded guilty on 20 August 2021 to three counts of conspiracy to supply controlled drugs, namely drugs of class A (cocaine) (count 1), drugs of class A (heroin) (count 2) and drugs of class B namely cannabis (count 3). The other defendants pleaded guilty to the cocaine conspiracy alone.
7. On 14 June 2023 all defendants bar one were sentenced by Mr Recorder Alty KC (as he then was). Kamaljit Chahal received a sentence of 18 years' imprisonment. Bhipon Chahal was sentenced to 15 years. Johal received 11 years. All those sentences were imposed on count 1 to reflect the overall criminality involved. Lesser custodial sentences, although substantial ones still, were imposed on counts 2 and 3 to run concurrently. The co-defendants received lesser but still substantial sentences.
8. In this court each of the applicants contends that the "starting point" adopted by the sentencing judge was "far too high", that the increase to reflect the offending on counts 2 and 3 was excessive, and that the judge had insufficient regard to the available mitigation. The second applicant has further and additional grounds. We shall consider the case of each applicant separately in turn.
9. Before doing so, however, we recall some general principles about sentencing for drug conspiracies and we note some features of the sentencing remarks in the present case which apply to the cases of both applicants.
10. The effect of the authorities on the approach to the harm element of drug offending of this kind was recently summarised by this court in R v Wilson [2024] EWCA Crim 124

at paragraph 26:

"Although it is appropriate for judges sentencing for drug conspiracies to use the statutory guideline, it does not expressly govern such cases and should not be slavishly applied to them. There are several differences between the approach to sentencing a defendant for a substantive offence and sentencing him for the criminality involved in a conspiracy. A defendant who takes part in a conspiracy supports the overall enterprise. The amount with which that defendant is personally and directly involved is of lesser relevance. The assessment of harm must also take account not only of the quantities with which the conspirator actually dealt but also of what the conspirators intended or foresaw. That is particularly significant when a conspiracy is brought to an end by police action. Such a conspiracy is usually intended to continue into the future. See Pitts [2014] EWCA Crim 1615; Smith [2020] EWCA Crim 994; and Cavanagh [2021] EWCA Crim 1584."

11. In this case, having made clear that he had these principles in mind, the sentencing judge went on to say the following:

"The harm, be it actual intended, or reasonably foreseeable, in this case is immense -- close, in fact, to being incalculable. The best calculation that can be made here is that for a little under half of the duration of the conspiracy approximately 70 kilograms of cocaine, 2.5 kilograms of heroin and 33 kilograms of cannabis was supplied. I avoid the strictly arithmetical approach, but these estimates inevitably err on the side of caution and I must bear in mind that at the time the EncroChat messages begin, the conspiracies are already in full swing, and what brings them to an end is the intervention of the authorities.

Thus, when considering harm, I struggle to imagine many more scenarios where the harm might be significantly greater. But for the intervention of the authorities, I have no doubt these conspiracies would still be running now, with massive profit coupled with immeasurable misery and suffering in consequence continuing."

12. We interpose to observe that the word "now" related to the date of sentence in June 2023.

13. The Recorder identified six aggravating features of the case which applied to each of the defendants before him:

- "a) the duration of the conspiracy;
- b) the amounts of drugs being traded, usually multi-kilo quantities;
- c) the sophistication of the enterprise;
- d) the use of EncroChat devices;
- e) the proximity to the source of importation, unusually close, as it is, in many regards here; and
- f) the persistence of the enterprise, particularly after you were told to stop using the EncroChat devices."

14. Observing that there must be an element of deterrence in sentences of this kind, the Recorder identified the appropriate sentence after a trial for someone playing a leading role in the cocaine conspiracy as one of 23 years' imprisonment. He noted that in the case of each of the present applicants that sentence had to be aggravated because of the other two conspiracies. The appropriate sentence after a trial for the heroin conspiracy would, he said, have been 14 years and for the cannabis conspiracy eight years. But, applying the recently revised Sentencing Council Guideline on Totality, the increase in the sentence after a trial for the lead conspiracy would be one of three years, bringing it to 26.

15. We turn to the case of Kamaljit Chahal.

16. He conceded that he had not only a leading role but the leading role in all of the conspiracies. He had a 2014 conviction for two offences of conspiracy to supply cocaine, the quantity being 12 kilograms, and two offences of transferring or concealing criminal property, namely £81,000. For those offences he had been sentenced to six years' imprisonment. To reflect this statutory aggravating factor the Recorder increased the notional sentence after a trial by one year to 27 years. The Recorder was not impressed

by counsel's contention that this applicant had regrets and remorse. He did however allow full credit for the guilty plea and thus arrived at the sentence of 18 years to which we have already referred.

17. On behalf of this applicant Mr Lewis KC advances three main points. First, he says that the 23-year notional sentence for a leading role in the count 1 conspiracy (to which he refers as the “tariff”) was "far too high". Secondly, it is argued that the judge was wrong to "aggravate the tariff" by three years for count 2. Thirdly, it is submitted that the judge failed to take proper account of the mitigation available to this applicant.
18. In support of his first submission Mr Lewis has focused on the figure of 70 kilograms of cocaine to which we have referred. He relies on the approach to sentencing of His Honour Judge Mooncey in another class A drug conspiracy case sentenced in the Crown Court at Leicester arising from an operation called Carter. He has also referred us to the well-known case of R v Cuni [2018] EWCA Crim 600, [2018] 2 Cr.App.R (S)18. In support of his second submission Mr Lewis argues that count 2 involved a far lower quantity of drugs than count 1. Again he relies on the prosecution calculations for the 14-week period to which we have referred. Thirdly, he identifies a number of mitigating features which he said should have contributed to the much lower “tariff” for which he contends.
19. In his oral submissions today, Mr Lewis has added a criticism of the sentencing judge’s reference to deterrence – not a matter raised in the written grounds.
20. We begin our consideration of these submissions with the Sentencing Council Guidelines for Supply of a Controlled Drug. These set the starting point for a leading role in the supply of five kilograms of cocaine or heroin at 14 years’ imprisonment with a range of 12 to 16 years. There are no guideline sentences for supply of the much larger quantities

with which this case is concerned. But the guideline states that “Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than Category 1, sentences of 20 years and above may be appropriate, depending on the offender’s role.”

21. We have already referred to the factors that have to be borne in mind when the case is one of conspiracy to which the guideline does not apply directly. A number of decisions of this court indicate how the court should approach such cases. We have taken account not only of Cuni but also the case of Cavanagh which we have already mentioned, and Wraight and Bannister [2021] EWCA Crim 1968, which was an Attorney General’s Reference arising from Operation Venetic where the total quantity involved in the operation was 120 kilos: see paragraph 3.

22. These and other cases provide important general guidance. One point that emerges is that sentences should not normally exceed 30 years, save in exceptional circumstances. But one consequence of that, as Cuni makes clear, is that there is bound to be a degree of “crowding or bunching” in cases such as the present, involving quantities which one might call "off the scale". In cases of this kind sentencing judges have to exercise judgment on the basis of the particular facts before them, applying the principles and guidance to be derived from the authorities. Where, as here, the sentencing judge has been involved in a case for some time and manifestly has a good understanding of the detail, then in the absence of an error of principle this court will be slow to interfere.

23. Looking carefully at this case as we have, we have found ourselves unpersuaded that the approach of the sentencing judge was out of kilter with the guideline or with the cases that we have mentioned.

24. As we have noted, the guideline provides a starting point of 14 years for a leading role in

the supply of five kilos of cocaine. Kamaljit Chahal was the leader and guiding mind of a conspiracy which, during the 14-week period for which the calculations were made, had supplied that drug at a rate of five kilos per week. The conspiracy lasted for over 30 weeks, from which one may infer that the conspirators dealt or certainly intended to deal with very considerably larger quantities. The operation would, as the judge observed, doubtless have continued had the authorities not intervened. The sentencing judge was entitled to describe the amount involved as close to incalculable. He was clearly entitled to take a starting point beyond the 20-year figure mentioned in the guideline.

25. His task then was to arrive at a just and proportionate sentence before reduction for the guilty plea. In doing so, in our judgment, he took careful and sufficient account of the authorities cited to him. He expressly had regard to the decisions in the Operation Carter case but observed legitimately that its facts were “not directly comparable”. That case was of course in no sense an authority. The judge's focus was appropriately on the specific facts of the case before him, as to which he had the assistance of a detailed sentencing note from the prosecution and equally detailed submissions from the defence, expertly represented as they were.
26. As to quantity, our reading of the sentencing remarks is that whilst avoiding a strictly arithmetical approach the judge was also declining to deal with the case on the footing that for the purposes of sentencing, the quantity of drugs involved was limited to the quantities involved in the 14-week period to which we have referred. That in our judgment would have been unreal.
27. Besides the quantities involved, the case featured the catalogue of aggravating features we have mentioned, which inevitably exerted strong upward pressure on the sentence. There were also some mitigating factors. Other than the guilty plea there was the delay

between plea and sentence, during which this applicant had been in custody on remand. At least part of that was during the pandemic. The applicant had made some positive steps during his period in custody. The judge referred to that last matter but he did not expressly mention all the other matters advanced to him or which have been relied on in front of us. It might have been better if he had. But we are satisfied that he took them all into account. At the end of his sentencing remarks he said:

"I have given appropriate weight to all matters advanced in mitigation irrespective of whether I have expressly mentioned them in these sentencing remarks or not."

We take the judge at his word. We observe additionally that the matters we have mentioned cannot in context be regarded as particularly significant counterweights to the multiple aggravating factors.

28. As for the reference to deterrence, we have reflected on this but see no reason to believe that it resulted in an uplift in the sentence additional to that which the judge would have arrived at applying the guidance and the authorities and referring to the guidelines themselves. Taking matters in the round, we have concluded that it is not arguable that this judge was wrong to arrive at the notional sentence of 23 years for the leading role in the offending on count 1.
29. As for the increase on account of the other offending, that reflected not only count 2 but also count 3 (the cannabis offence). No complaint has been made or could be made of the notional sentences at which the judge arrived for either of those counts. The heroin offence was implicitly treated as within guideline category 2 which has a starting point based on one kilo of 11 years' custody and a range of up to 13 years. The quantity of 2.5kg on which Mr Lewis has relied today would of itself take the case upwards within

the range before consideration of aggravating factors. But reliance on that quantity is, with respect, misconceived when (a) it represents only part of the quantity that one can infer was dealt with or intended to be dealt with during the period of the conspiracy and (b) the applicant intended the conspiracy to continue. Similar reasoning applies to count 3. In our judgment, so far from being arguably excessive the uplift of three years to the lead sentence to reflect the additional offending was on the lenient side.

30. The addition of a single year to reflect the further aggravation provided by this applicant's recent relevant conviction was also a modest one.

31. Accordingly, we see no arguable merit in the grounds of appeal advanced on behalf of this applicant.

32. Turning to Bhipon Chahal, the Recorder noted that his conduct had features of leading role - that being the prosecution's case about his part in the offending - but the Recorder accepted that this applicant's behaviour also exhibited features that readily equated to "significant" role. The Recorder's observation in those circumstances was that he was "less concerned with seeking to put any particular defendant into any specific category and far more concerned with ensuring that the sentence I impose is just and fair in all the circumstances." He accepted that this applicant's role was subordinate to that of Kamaljit Chahal and on that account he reduced the notional sentence after consideration of relevant aggravating features by three years, bringing it down to one of 23 years.

33. The Recorder next made allowance for this applicant's relative youth, noting that he would have been in his early twenties when he became involved in the offending, and for what he called other "substantial mitigation". The applicant had no previous convictions and (as the Recorder put it, "more impressively") he had found the courage to withdraw from the conspiracy from the middle of May onwards. Those matters brought the

notional sentence after trial down by a further two years to 21 years. Giving a full one-third reduction for the guilty plea the Recorder arrived at a sentence of 14 years.

34. The grounds of appeal advanced by Mr Singh are that (1) the notional sentence of 23 years for a leading role was “far too high”, (2) the sentencing judge overstated this applicant's seniority within the conspiracy, (3) the judge had no regard for the fact that this applicant was induced to take part in the offending by his older and influential uncle, (4) insufficient regard was had to the applicant's withdrawal from the offending, (5) no or no proper regard was had to the applicant's young age at the start of the offending and (6) there was insufficient regard to the applicant's other mitigation, including his good character, his difficult upbringing and his expressions of remorse.
35. Mr Singh has presented these points in writing and in oral submissions today with skill and subtlety. He has referred us to a number of supporting materials to which we have had regard. These include but are not limited to a report from a drug expert advancing contentions about this applicant's particular role and the case of ZA [2023] EWCA Crim 596 concerning the approach to be taken to the sentencing of young adults.
36. Our decision in the case of Kamaljit Chahal disposes of the first ground of appeal advanced on behalf of this applicant. The notional sentence for a leading role in the cocaine conspiracy, which is the stepping off point for the judge's approach to sentencing this applicant, was a legitimate one. We have also dealt with the propriety of the sentences for counts 2 and 3 and the appropriate increase in the lead sentence to reflect that other offending.
37. The first critical issue so far as this applicant is concerned relates to the judge's assessment of his role. We have not been persuaded that the sentencing judge's approach to that issue was arguably outside the range of reasonable responses to the material before

him, or that he may have overlooked any of the other matters relied on. On the contrary, the applicant's voluntary departure from the conspiracy featured prominently in the judge's reasoning, as did his age. It is clear that the judge made downward adjustments to reflect those matters. We are also satisfied that the other matters of mitigation that are relied on before us were all taken into account as the judge expressly stated.

38. That brings us to the question of the weight attributed by the judge to those various factors. As to quantity, using an arithmetical approach it is legitimate to infer from the figures provided that this applicant was involved with roughly 60 kilos of cocaine, two kilos of heroin and 25 kilograms of cannabis. Departing from the arithmetical approach, the quantities with which he was involved undoubtedly go very far beyond the top of the range for a Category 1 offence. As to role, the prosecution sentencing note in our judgment justifiably puts a very different aspect on the matter from that advanced on this applicant's behalf. It identifies a number of messages which in our view amply support the judge's assessment. This applicant performed a number of important functions acting as a number 2 to his uncle over a period of some three months.
39. The applicant was not a child. He was 22 at the time of the offending. As the single judge said, there is a limit to the impact which his relative youth and the other mitigation factors could have. We agree with and adopt the single judge's observation that this applicant's behaviour was "not a hot-headed immature response to a situation, but it was the participation over a period of time in a highly sophisticated criminal conspiracy where there was the prospect of large sums being earned by you".
40. The ultimate question for us is whether it is arguable that the sentence imposed was not just and proportionate but manifestly excessive. With respect to the submissions advanced by Mr Singh, we do not consider that is so and in the result, despite the able

arguments of counsel today, both of these renewed applications are 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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