



Neutral Citation Number: [2020] EWHC 1342 (Admin)

Case No: CO/1439/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 April 2020

Before :

MR JUSTICE FORDHAM

Between :

GREGORZ SUCHORA
- and -
CIRCUIT COURT IN LUBLIN, POLAND

Applicant

Respondent

MARY WESTCOTT (instructed by Shaw Graham Kersh) for the **Applicant**
LAURA HERBERT (instructed by CPS) for the **Respondent**

Hearing date: 29 April 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, in circumstances where the magistrates court has previously withheld bail in extradition proceedings. I am not reviewing any refusal of bail by the magistrates; I am looking at the bail merits afresh: see the observations of Mr Justice Stewart in the case of Tighe [2013] EWHC 3313 (Admin) at para 5.
2. This has been a remote hearing by telephone, in circumstances of the coronavirus restrictions and rule changes. The parties have co-operated and agreed on this mode of hearing. The hearing and its start time were listed in the cause list published online, with contact details available to anyone who wished to have permission to dial in. Indeed, a member of press has done so. Counsel were able to address me in exactly the way that they would have done had we all been sitting in the court room. I am satisfied that this constituted a hearing in open court, that the open justice principle has been secured, that no party has been prejudiced by the mode of hearing, and that in so far as there has been any restriction on a right or interest it is justified as necessary and proportionate.
3. Ms Wescott on the half of the applicant applies for bail emphasising a number of points. In particular, the essence - as I see it - is as follows. The starting point is that there is a statutory presumption in favour of the grant of bail, by virtue of section 4(2A) and (2B) of the Bail Act 1976. The applicant is not a fugitive and there is a finding of fact to that effect in the judgment of the district judge. It is not a case where there is any relevant failure or any failure at all previously to appear or respond. It may previously have been thought, on previous bail applications at least at the start of the proceedings, that this was a case of previous failure to answer. There were summonses which to which the applicant did not respond. But the district judge found as a fact that they had been intercepted by the applicant's mother. Indeed, says Ms Wescott this is a case where the applicant has made various offers of cooperation as alternatives to an extradition, including an offer of voluntary surrender. She says that he is to be taken also clearly to have accepted the outcome of the district judge's judgment ordering his extradition that because there is no application to this court for permission to appeal. She emphasises that he is a man aged 25, of good character in all jurisdictions. And that he has what is said to be close ties to the United Kingdom having been here since July 2016. Emphasis is placed on his family ties, in the same area Plymouth and indeed in the same household were he to be bailed on conditions, are other family members. His sister has been there since 2011 and his mother since 2015. His sister has a son, the applicant's nephew, who is aged 8. Personal circumstances are also referred to including the current circumstances. Ms Wescott submits that these serve to make bail, even if it is short-term, worthwhile for the applicant. She tells me the principal motivation in the current circumstances is to remove him, even in the short term, from a prison environment in the context of the coronavirus pandemic, so that he is in a safer place. Her submissions, particularly in the written submissions, draw attention to the uncertainty that he currently faces as to the timeframe for any implementation of the order for surrender and extradition. Reference is made to his relative vulnerability and his previous mental health difficulties. She reminds me that he is been in custody for 6 months and submits that that has served very clearly and definitely to focus his mind. She relies on the fact that his motivation will be influenced by the knowledge that bail is something that would

come to be considered in Poland and compliance with conditions in this jurisdiction would be relevant to that. She submits that it's not a case where there are substantial grounds to believe that the applicant would fail to surrender. But even if there were any concerns, she submits that those concerns are amply met by conditions that are being proposed and I am invited to make. They include residence and electronically-monitored curfew, and the possibility of reporting conditions. They include £1,000 pre-release security which she points out is the sum of great significance to the mother and sister given their own personal and financial circumstances. Conditions would also including the surrender of the applicant's identity card, a prohibition on applying for any travel document or going to a port or international train station or airport, and a mobile phone condition to ensure that he is contactable at all times. There is also the prospect of a condition to restrict and prohibit family members from making any contact with witnesses related to the Polish proceedings in this case.

4. I have had regard to all of those matters and the other points that were made in writing and orally, but I have come to the conclusion that, in my judgment, there are substantial grounds in this case to believe that this applicant would fail to surrender if he were granted bail and notwithstanding the imposition of conditions. In my judgment the circumstances of this case do rebut the presumption in favour of the grant of bail. In particular, the features of this case include the following.
5. The charges and the custodial implications if convicted are serious and substantial. The charges - the three that are the subject of the order for surrender – are a charge of what has been characterised as rape and two charges of harassment. They relate to an extended period of time. They stand to attract a substantial custodial sentence were the applicant to be convicted of them. The district judge made reference to this in her judgment when she concluded that 'the alleged offences amount to serious offences committed over a period of time the most serious being rape', and she said she was 'satisfied that if convicted the applicant was likely to receive a lengthy custodial sentence'. She also found that that witnesses are available in Poland for the case to proceed on the evidence before her. There is nothing on the evidence before me that would serve or stand to displace that.
6. The next point is that what stands currently between the applicant and extradition is the practicality of flight arrangements being made in the context of the Covid 19 pandemic and the uncertainty and complications arising from that. The district judge has ordered extradition, the legal arguments made to resist it have all failed, and there is no extant application to this court for permission to appeal nor any other avenue on the face of it. In my judgment, the points relating to delay and the coronavirus pandemic are not separate factors in relation to the consideration of bail. But I have to consider the position of the applicant and I do so against what I have been told about the suggestion of the virtues for him are of a period of liberty, albeit short term, on bail in the current circumstances.
7. I have also taken into account that, on the face of it, there are materials that indicate that on the part of the applicant's mother she has made direct contact with people who are relevant to the prosecution in Poland. Ms Wescott has submitted that that contact goes back to the end of last year or the very beginning of this year. But it is in my judgment a legitimate concern raised by the respondent. It also links to a point I have made already about the interception of legal process documents. It does give rise to a

concern that the family and family arrangements cannot, in all the circumstances, be regarded as constituting the protective factor that they might otherwise.

8. Finally, looking at the position of the applicant himself. He is single. Although he has family members, and 4 years in the United Kingdom, he has no dependents here in the United Kingdom. I accept the submission made on behalf of the respondent by Ms Herbert, that there is no evidence of particularly strong community ties. He is effectively free to fail to surrender should he decide to do so, lacking a sufficient anchor to allay the concerns, given the clear incentive that he has on the face of it to do so.
9. I am aware that two district judges, leaving aside whatever the position might have been at the outset of the proceedings, have more recently refused bail. They have done so based on their concerns as to risk relating to failure to surrender. The first of those two district judges reached that conclusion on 14 January 2020. The second reached the same conclusion on 23 April 2020, just a week ago. I emphasise, as I said at the start, that I am not reviewing their conclusions, in a 'light touch' way, or at all; I have to reach my own independent evaluation afresh of the merits relating to bail. But looking at those merits and reaching that evaluation afresh, I have reached the same conclusion that they did.
10. For those reasons and in those circumstances the application for bail is refused.