



Neutral Citation Number: [2020] EWHC 1345 (Admin)

Case No: CO/1453/2020

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 30 April 2020

**Before :**

**MR JUSTICE FORDHAM**

**Between :**

**ZBIGNIEW HARTUN**  
**- and -**  
**REGIONAL COURT OF GDANSK, POLAND**

**Applicant**  
**Respondent**

**BEN COOPER QC** (instructed by EBR Attridge) for the **Applicant**  
**TOM COCKROFT** (instructed by CPS) for the **Respondent**

Hearing date: 30 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.

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 skype for business, in circumstances of the Covid-19 restrictions and rule changes. The parties commendably cooperated 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 law reporter 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 of the following: 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 insofar as there has been any restriction on a right or interest it is justified as necessary and proportionate.
3. The applicant is 56. He was sentenced in Poland in 2010 and 2012 for fraudulently obtaining credit applications. There were 8 separate offences of fraud, as Mr Cockcroft reminds me, which took place in 2009.
4. He came to the United Kingdom in August or September 2014, 6 years ago. He came with his daughter who was 16 at that time, and the reason they came to the United Kingdom on the evidence was for her education, which they wanted to take place in this country and which he supported, having been at a single parent sole carer for her since the age of 5. She studied at Sussex Downs College in Eastbourne and they lived in a privately rented flat in Eastbourne. She returned to Poland at the age of 18 to continue with her higher education. She is now 21. She lives there, she is married and she is studying to be a dental hygienist.
5. The applicant was arrested at home on 8 March 2020. He has been in custody ever since. Bail was refused by the magistrates on the 9<sup>th</sup> and 16<sup>th</sup> of March 2020 and on 17 April 2020.
6. The key question for me, as everyone agrees, is whether there are substantial grounds for believing that, if released on bail subject to conditions, the applicant would fail to surrender.
7. The essential points, as I see it, for resisting bail start with the fact that there is no presumption in favour of the grant of bail in a case which concerns a conviction warrant.
8. Next, there is the fact that a significant term of custody is faced by the applicant if extradited namely 4 ½ years, as things currently stand though Mr Cooper says there is the prospect of aggregation, and he also relies on some prospect of the re-suspension of what were originally suspended sentences.
9. Also relied on as concerns in this case are the picture so far as past non-compliance is concerned, and a failure to face up to legal obligations and legal responsibilities in

conjunction with the Polish criminal process. That includes the events which triggered the suspended sentences being activated which on the evidence was the non-payment of compensation. Reliance is also placed on what on the evidence was a failure to keep in contact with probation notwithstanding being advised that he was required to do so. In so far as there is evidence before me that has not yet been confirmed, accepted and verified I am asked to proceed with caution. The respondent maintains the position, so far as non-compliance is concerned, as set out in Further Information dated 24 April 2020, namely: that the applicant's last contact with a court-appointed curator was 26 June 2014; that he violated a ban by coming to the United Kingdom; and that he had told the curator that he was coming for a short-term trip. The characterisation of fugitive is maintained, at least at the current time.

10. There are other points and concerns that also apply the present case. For example, as I see it, there is the fact that the applicant has no current dependants here in the United Kingdom; and that he is not a homeowner with equity in a house.
11. I have regard to all of those matters, and indeed all the circumstances of this case, in arriving at my evaluation and assessment.
12. I remind myself that bail is available in a conviction warrant case. The fact that a term of imprisonment is faced, and indeed a significant term of imprisonment is faced, is not and cannot be determinative and the question of bail. I remind myself that it is almost inevitably, if not inevitably, the case that there will be some act of non-compliance in any case such as the present, where the question of bail arises and an individual is wanted to serve custody. I also remind myself that I am considering all of the merits afresh, notwithstanding the magistrates' refusals. I have in mind that I have different material compared to the material that the various magistrates considered.
13. I am satisfied, on the evidence, that there are that there are not substantial grounds for believing that, if released on bail subject to conditions, this applicant would fail to surrender.
14. I start with the question of his 'compliance' profile.
15. There is reference in the materials to various appearances and non-appearances at hearings during the Polish criminal process. But, on the evidence, is not said that the applicant was obliged to attend reached an obligation and not attending or that there was any legal consequence of those non-attendances.
16. I have referred to the position taken on the applicant 'violating a ban' in relocating to the United Kingdom without consent, on the 'last contact' being June 2014, and on the applicant being said to have informed the curator that it was 'a short term trip'. That is obviously a matter of significance because it would indicate that he has absconded, in the face of the court order, and is squarely to be regarded as a fugitive.
17. For the purposes of this bail application I have before me a document which the applicant's lawyers have produced: the solicitor has put in a witness statement which confirms that this was received from a Polish lawyer who is the applicant's Polish legal representative. The court is also told that it was obtained from the probation file.

It has been translated for me. I recognise that it has not yet been accepted by the respondent as an authentic document or its accuracy confirmed, and I respect the submission made that I should proceed with caution. On the other hand, it is a detailed document which on its face records contemporaneously the position as it stood in December 2015. It is a document which records detailed contents as to what the position had been from 2014 onwards, from the perspective of probation. It is a document which was not available or relied on at the time when the applicant made his witness statement and I am able to look at that the two documents side by side. It is also a document which is balanced so far as its contents are concerned. Particularly striking in it are some descriptions of a default in staying in communication after October 2014 and concerns, as at December 2015, as to the applicant's 'current whereabouts'. Language is used such as 'reckless', 'reprehensible' and 'dismissive', as a description of the applicant. All of that is relevant when I am considering whether this, on the face of it, appears to be a reliable contemporaneous description of the position, warts and all, as it stood in 2015. Notwithstanding the reference being made to caution, I am satisfied, in a case concerning the liberty of the individual, and for the purposes of my evaluation, that I can properly rely on the content of this document in assessing the circumstances of this case.

18. On the evidence, it is not the case that there was 'no contact after June 2014'. It may very well be the case – and I am not making any finding of fact, on this bail application, on any issue at all – it may very well be the case that there were two different individuals involved in the process. One, the individual described as the 'curator', and the other the individual who is describing various events in the report of December 2015 to which I have referred. That would be entirely consistent with the applicant's own witness statement. He describes having contact with two different individuals and that, most directly, contact was with what he says was a 'police officer'.
19. On the evidence, the applicant spoke to the officer, from the United Kingdom; and did so up to October 2014. On the evidence, the response to that from the officer was not 'you are in breach of a condition by having gone to the United Kingdom'. The response was 'you are advised to maintain regular contact by phone or email'.
20. On the evidence, the applicant had explained that he was going to the United Kingdom, so that his daughter could pursue her medical studies there. The report records that and it records that her college was the Sussex Downs College in Eastbourne.
21. The report does not assist me with the question of whether the applicant had, as he says in his evidence, provided the address of his flat, post-arrival in Eastbourne. But nor does it contradict that. The concern perfectly understandably expressed in this report is as to the absence of contact since October 2014. The writer, in December 2015, is saying that they have no information about his 'current' whereabouts. That is consistent with the fact that they knew his whereabouts in the autumn of 2014. And, whether or not they had recorded the specific address of his flat, they certainly had the address of his daughter's college. It is very difficult to see why someone who would be willing to give the Eastbourne address of the college and then have several phone conversations from the United Kingdom after August, having arrived, but would conceal the address of the flat in Eastbourne.

22. On the basis of this evidence, as things currently stand, before me, there is support for the applicant's position that when he relocated he did so openly as to the purpose; and that that purpose was not 'short-term visit'; that he was not relocating in circumstances where he was being told that the relocation breached any obligation; that he did continue to have contact after June 2014 and after being in the United Kingdom; and that it wasn't and wasn't described as a 'short term trip'. I cannot and I am not resolving the question of whether the flat address was given in 2014. Nor am I proceeding on the basis that it wasn't. Nor am I resolving any question about whether he remained in contact, in particular after December 2015 which was the date of this report, and whether there was 'informal' contact. What I am doing is evaluating the risk and considering the evidence, taking into account of all of the information. That includes the characterisation of 'reckless reprehensible and dismissive' on the question of not staying in contact after October 2014. On the other hand, I have in mind that the writer of the report had put forward the discontinuance of contact as a basis for triggering the suspended sentences in January 2015 and that course was rejected. I also have in mind that on the evidence, far from absconding from Eastbourne in after October 2014, the applicant remained there and his daughter remained at the same college.
23. So far as the factual position and non-compliance or compliance is concerned, I have in mind that, on the evidence including the further information of 24 April 2020, it was the non-payment of compensation which was the trigger for activating the suspended sentences. The information says this: 'he also did not pay the money due to the aggrieved persons which was the cause of the enforcement of sentences of deprivation of liberty'.
24. Finally, in relation to the past picture, there is no history I have seen in any document, nor is any relied on, of failure to comply or failure to attend either previously in Poland or subsequently following coming to the United Kingdom. It is fairly recognised in the respondent's skeleton argument that the applicant was 'compliant on arrest'.
25. Next, I say something about the applicant's circumstances.
26. In these extradition proceedings there has been no hearing yet before the district judge. That is due on 2 June 2020. No order has been made.
27. On the fact of it, there are arguments to be made on his behalf before the district judge. I leave to one side whether, were the district judge order extradition, there may also be arguments to be made in this court. I am not evaluating or commenting on any of the arguments. But, as Mr Cooper points out in his skeleton argument, there are relevant issues, to say the least, that will arise from the circumstances of this case, including: the extent to which he can really be described as 'a fugitive'; the openness of the way in which he has lived in this country; and the lapse of time are in pursuing him.
28. Moreover, on the face of it, there are steps to be pursued in Poland and a Polish lawyer is doing precisely that.

29. I turn to his personal circumstances. On the evidence, he has lived in the same home since 2014: a privately rented flat. He has a medical condition which requires him to have equipment that he uses at night, assisting with his breathing. He has concerns in the context of the current coronavirus pandemic about all of that and about his personal safety. I emphasise that I do not regard the Covid circumstances and risks in prison as a freestanding factor: if I thought there were substantial grounds for believing that he would fail to surrender, none of that could make a difference to my decision. But it is a relevant circumstance when I consider his personal circumstances and I evaluate what I consider the risks to be were he to be released on bail. Whether he would abscond. Whether he would travel, and seek to disappear, and run all the risks attendant on that, breaching the conditions of his bail, with the implications of that in the proceedings against him.
30. The applicant's circumstances also include his ties to the United Kingdom, where he has been since 2014. His ties to this country were such that, when his daughter's education relocated to Poland aged 18, he stayed here to pursue his life here and to continue to support her, but doing so financially from the United Kingdom. On the face of it, he has lived openly here in the United Kingdom. He is of good character in the United Kingdom with no further offending.
31. The final topic, which combines to support the conclusion I have expressed, as to the abscond risk, relates to the conditions.
32. There is financial security being offered, which I have taken to be pre-release security. It is £1,000, to be provided by the applicant's daughter. On the evidence, this is her savings and all of her savings. On the evidence, there is a close tie between them. She was the reason why they came to the United Kingdom. I have described her current circumstances. I have considered the options which the applicant has, in the light of the security. One is to stay where he is at his flat in Eastbourne, pending the proceedings, and comply with the conditions imposed on him. Another would be to return to Poland, where his daughter is, but in circumstances where he is pursued by the Polish authorities. A third possibility would involve absconding, to go elsewhere, with the potential of losing contact with his daughter, and with the £1,000 being lost. That is, in my judgment, sufficiently remote as not to undermine my assessment.
33. The other conditions are also protective. The applicant would be in breach if he broke his curfew which is electronically monitored. He would be in breach if he were uncontactable by mobile telephone. He would be in breach if he went to a port or an airport or an international railway station. He would not have identity documents, his passport and driving licence having already been surrendered. I do consider it appropriate that there be a weekly reporting requirement to the local police station. It is appropriate that a proactive step should be taken to keep him on the radar of the authorities. I have no reason to think that social distancing requirements cannot be adhered to in such an arrangement. If there is some difficulty it could be addressed by way of appropriate variation, presumably in the magistrates court.
34. In the end, I have asked myself the key question. Having regard to all these matters, in my judgment, and on the evidence there are not substantial grounds for believing that, if released on bail subject to conditions, the applicant would fail to surrender. The application is granted and I will leave it to counsel to liaise and provide an agreed

draft order which embodies the conditions, and which I will subsequently be able to approve. Thank you both, and those who instruct you, for your assistance.