



Neutral Citation Number: [2020] EWHC 2352 (Admin)

Case No: CO/2797/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 August 2020

Before :

MR JUSTICE FORDHAM

Between :

ADRIAN POSTELNICU
- and -
ITALIAN JUDICIAL AUTHORITY

Applicant

Respondent

Wojciech Zalewski (instructed by AM International Solicitors) for the **applicant**
Jodie Hitchcock (instructed by the Crown Prosecution Service) for the **respondent**

Hearing date: 18 August 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 in extradition proceedings, bail having been refused by a district judge in the magistrates' court on 23 April 2020 and 11 May 2020. Mr Zalewski rightly characterises my statutory function, pursuant to section 22(1A) of the Criminal Justice Act 1967, as involving consideration of bail "afresh": see Tighe [2013] EWHC 3313 (Admin) at paragraph 5.
2. The mode of hearing was a BT conference call. The Administrative Court provide a prior opportunity for the parties' representatives to state any preference or provide any reasons why remote hearing was considered inappropriate. Like the parties' representatives, I was and remained satisfied that a telephone hearing was appropriate. I heard oral submissions in exactly the way I would have done had we all been physically present in a court room. As regards open justice, the hearing and its start time – together with an email address which could be used by any person wishing to observe the hearing – were published in the cause list. The hearing was recorded. This judgment will be released into the public domain. By having a remote hearing, we eliminated any risk to any person, from having to travel to, or be present in, a court. I am satisfied that no right or interest was compromised and that, if there was any interference with or qualification of any right or interest, it was justified as necessary and proportionate.
3. The applicant is aged 30 and is to be extradited to Italy in conjunction with a European Arrest Warrant issued on 11 June 2019. That is an accusation EAW and the applicant consented to extradition, which was ordered at the magistrates' court on 21 May 2020. The delay in removal arises for operational reasons connected with the Covid-19 pandemic. Successive ten-day extensions have been granted, most recently a 10 day extension for removal from 20 August 2020, by court order dated 10 August 2020. The EAW relates to two alleged offences of 'racketeering and extortion'. The first, carrying a maximum sentence of 20 years imprisonment is conspiracy to commit blackmail. The allegation is that on five occasions between 20 September 2018 and 8 October 2018 the applicant, together with two others, made threats to a person in order to extort a total of €10,000. The second alleged offence, carrying a maximum of 6 years imprisonment, is a linked charge of facilitating prostitution.
4. The essence of the application put forward for bail is, as I see it, as follows. A statutory presumption in favour of the grant of bail arises, since this is an accusation EAW. That presumption is not displaced. The applicant has solid ties to the United Kingdom, having a wife and two young children here (aged 7 and 5), living at what is described as an assured shorthold tenancy and having set up a business here in January 2019. A letter from the applicant's Italian lawyer expresses confidence that bail is likely to be granted in Italy, pending a January 2021 trial, for the applicant to be on house arrest at his parents' house, in the light of evidence that he left Italy for the United Kingdom, not as a fugitive but for the purposes of work. That letter records the co-accused as having been sentenced to custodial terms of 12 months, and 34 months (for the more directly involved of the two), that sentence moreover having been suspended. Mr Zalewski says this is relevant as to expected 'top-end tariff', so far as concerns the applicant if convicted and sentenced. The applicant has no convictions in the United Kingdom and, importantly, has consented to his extradition and so wishes to engage with the Italian proceedings. Mr Zalewski says this may be the last chance to be with the young family and seek to assist them financially, even if for a short time, for the

foreseeable future. Stringent bail conditions are put forward capable of allaying any concerns that might arise as to failure to appear. They include: a residence requirement to live with his wife and children; an electronically monitored curfew; the continued retention of identity and travel documents; the further surrender of the family's identity and travel documents; a pre-release security of £2,500 (from a family in financially challenging circumstances); daily reporting to a police station; constant contactability through a mobile phone; and the usual restrictions prohibiting the obtaining of travel documents or the attending of international travel hubs. That, as I have said, is the essence – as I see it – of the case for bail.

5. The respondent, through Ms Hitchcock, objects to bail on the basis of risk of failure to surrender. I have considered the matter carefully, and afresh, and I am grateful to both Counsel for their assistance. I am not prepared to grant bail in this case. In my assessment, there are substantial grounds to believe that the applicant would fail to surrender, if released today on bail, and notwithstanding all of the conditions that are put forward. I will give my reasons why I have arrived at that assessment, notwithstanding all the points put forward by Mr Zalewski which I have sought to summarise.
6. The starting point is that I have to proceed on the basis that the applicant is due to be removed by 30 August 2020: that is to say, in 12 days' time. That may or may not in the event happen and it is possible that there will be a further extension or extensions. But I accept Ms Hitchcock's submission that this court should proceed on the basis that that is the due removal date.
7. The next point is that the applicant faces serious charges and, if convicted and sentenced in Italy, the prospect of custody for a significant period. The Italian lawyer's letter does refer to the co-accused and does appear to describe the second and more involved of the two of them as having the higher custodial sentence of 34 months, and as having had that sentence suspended by the Italian court. I accept Ms Hitchcock's submission that this Court is in no position to arrive at any conclusion as to the particular roles played by the applicant, if guilty, and the second co-accused who on the face of it was the woman involved in an act of prostitution with the consequence of the subsequent extortion. It is at least possible that very different considerations will arise in relation to the applicant and his role, and the same can be said so far as any question of suspension of any sentence is concerned. I cannot make any assumption and am making no finding as to what the length of sentence in Italy would in this case be, and whether or not it would stand to be suspended; nor if it were what the conditions would be. I proceed on the basis that there is, at least, a very significant prospect that the applicant will face a substantial term, of immediate custody, in Italy if convicted and sentenced. I proceed on the basis that he may well perceive that as being the position. I do not have evidence of a nature and quality as to rebut or displace or answer those assessments. I emphasise, I am not in a position to make findings of fact.
8. The next key point, in my judgment, is that the chronology and circumstances of this case are at least consistent with the concern that the applicant came to the United Kingdom as a fugitive. The alleged offending relates to a period in September and October 2018. It is clear from the documents that the district judge (considering bail) understood the applicant's position to have been that he had come to the United Kingdom in October or November 2018. On that basis the claimant would have been coming to the United Kingdom shortly after the alleged incidents. The respondent

submits that: ‘the applicant appears by own earlier admission to have had some knowledge of the allegations he was facing at the time that he left Italy’. Mr Zalewski, rightly, points out that no finding of fact as to fugitivity has been made and I repeat I am not making one. But there are grounds, on this basis alone, for being seriously concerned that the applicant came to the United Kingdom knowing that he was a person of interest in Italy in relation to these alleged offences. There was some suggestion on the face of the materials that the family came even later, on 19 January 2019, though the document recording a travel booking appears to have been post-dated (30 April 2020). That January date would raise some question-marks about the circumstances in which the applicant was able to start his own business by incorporating a company here on 8 January 2019. But on the basis that they did travel to the UK, or possibly back to the UK, on 19 January 2019, that on the face of it is also a matter of concern in the chronology. Mr Zalewski says that the arrest what in this case was “21 January 2018”. He is right that that is the date on the face of the translation of the EEW. But that cannot be right if the offences were September and October 2018. If the domestic arrest warrant in Italy was “21 January 2019” then that has some resonance so far as travelling two days prior to that is concerned. The further strand, in relation to fugitivity, is the Italian lawyer’s letter. It says its confidence as to securing bail (or ‘house arrest’) at the applicant’s parents’ house in Italy is because: “we have evidence that you were abroad for job, and not to escape from the Italian justice”. There may be evidence of that kind but it is not evidence that it is before this court. So, there is a serious concern as to whether the applicant came to the United Kingdom knowing that he was facing allegations in Italy.

9. The next point relates to the applicant’s cooperation with the extradition process. That is a point which is tempered by the fact that he had previously attended 3 hearings – on 23 April 2020, 30 April 2020 and 11 May 2020 – and the position at each of those 3 hearings had been that he was not consenting to extradition.
10. The next aspect of the case relates to the applicant’s links to the United Kingdom, and his family and business here. Taking the position as the district judge understood it, based on what he was told, the applicant came to the United Kingdom in October or November 2018. I have referred to the fact that there is some suggestion that he came in January 2019. In either case the daughters were already ages 5 and 3. The period of time in which the family has put roots down in the United Kingdom is a short one. The applicant was arrested on 22 April 2020. That also means that the period ‘in the United Kingdom without any conviction here’ is itself a relatively short one. That also supports the view that this is a mobile family, who has been able previously, and in the recent past, to relocate as a family. I have in mind that there is, moreover, a third country in this case: the applicant is said to be a dual Romanian and Italian national, and I have seen in the bundle the Romanian passport of his wife.
11. Extradition is imminent in this case. Were there no substantial grounds for believing that the applicant would fail to surrender, I would certainly grant bail and it would be nothing to the point that that grant of bail might only be in the event for a short period of time. The short period of time is not of itself a reason to refuse bail. Nor is it certain that the removal will take place by the end of this month. But the imminence of the removal is a factor in the assessment of risk.
12. In my judgment, on the basis of all the material in this case, there are substantial grounds for believing that the applicant would fail to surrender, despite the conditions put

forward; and those concerns outweigh and rebut the presumption under the statutory scheme that arises in favour of granting bail. For those reasons, the application for bail is refused.

8 August 2020