Neutral Citation Number: [2021] EWHC 2375 (Admin)

Case No: CO/2704/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

24th August 2021

Before :

MR JUSTICE FORDHAM

- -

Between :

AMITKUMAR KANUBHAI PATEL	**Applicant**
- and -	
GOVERNMENT OF THE UNITED STATES OF AMERICA	**Respondent**

- -
- -

Abigail Bright (instructed by Thompson & Co Solicitors) for the **Applicant**
Saoirse Townshend (instructed by Crown Prosecution Service) for the **Respondent**

Hearing date: 24.8.21

Judgment as delivered in open court at the hearing

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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, and approved, by the Judge.

MR JUSTICE FORDHAM :

1. This is an application for bail in an extradition case, in which bail has been refused in the magistrates court. My jurisdiction involves looking at the question of bail afresh. This is an accusation case and therefore Ms Bright, in the written submissions that she has adopted at this hearing, rightly emphasises that there is a presumption in favour of the grant of bail. The hearing was in person. The Applicant is aged 38 and is wanted for extradition to the United States. He is wanted to face trial there on an indictment which in essence alleges against him international parental kidnapping. Extradition is resisted by him and he strenuously denies any criminal offence.

2. The essence of the case for bail advanced on the Applicant's behalf, as I see it, is as follows. The facts and circumstances of the case, when assessed overall, do not displace or rebut the presumption in favour of granting bail. There is in this case no substantial ground for believing that, if released on bail, the Applicant would refuse to surrender or would abscond. Any concern that might arise on that score is allayed by the proposed bail conditions. Those conditions include a residence requirement to live with his sister in Harrow, a pre-release security of £25,000, signing-in conditions at a local police station, an electronically-monitored curfew, provision for the re-surrender of a passport and for that and all identification cards to be retained, and the usual conditions regarding travel documents and international travel hubs. Although having limited ties to the United Kingdom, a topic Ms Bright recognised is addressed in the District Judge's judgment of 23 June 2021, there is a viable bail address with the sister who lives in this country and the Applicant does therefore have clear, durable and meaningful links. He is incentivised by the ability to re-establish a (remote-access) link to his son, now nearly 5 years old, who is currently with the Applicant's parents (the child's paternal grandparents) in India. The Applicant has no convictions here in the UK, or in India, or in the United States (where he lived from 2008 until July 2017). The Applicant has fully engaged in legal proceedings here. That is not only in resisting extradition, in relation to which he now has an extant right to seek permission to appeal against the District Judge's judgment of 23 June 2021. It is also in proceedings in the Family Division of the High Court and Court of Appeal. Having engaged with those family proceedings he has been 'vindicated' through clear findings of fact, made by a High Court deputy judge and left undisturbed by the Court of Appeal. Those findings of fact provide vindication in having accepted as true the Applicant's version of the events in May to July 2017 when he obtained a US court order for sole custody of the child (born the previous November) and then took the child to India. The Deputy High Court Judge, having heard evidence from the Applicant and the mother, found that the mother had 'agreed' to those steps being taken. That vindication both provides general confidence on the part of the Applicant in proceedings in this jurisdiction, but also strongly and materially affects his position so far as the US accusation warrant is concerned. On the basis of those findings of fact the Applicant has good prospects, and can be expected to perceive having good prospects, were he standing trial of international kidnapping in the United States. He may also perceive good prospects in this Court on the point of law (relating to forum) which would be central to any application for permission to appeal from the judgment of the District Judge. As it is put by Ms Bright, the central issue in this extradition case – so far as the US alleged crime (international kidnapping) is concerned – is whether there was maternal agreement in 2017 to the child's removal by the Applicant to India. These points provide the essence of the case for bail, as I see it. I

am quite satisfied that it has been clearly thoroughly and comprehensively put forward by Ms Bright in the written submissions which she has adopted.

3. Notwithstanding the attractive way in which the points have been advanced, I am not prepared to grant bail in this case. In my objective assessment of all the circumstances, there are substantial grounds for believing that – if I released the Applicant on bail and notwithstanding the proposed conditions – he would subsequently fail to surrender.

   i) The starting point, in my assessment, is the serious allegation that is raised against the Applicant in the United States, with its accompanying seriousness so far as any penal consequence would be concerned. Those stand as matters which, on the face of it, he would have a strong incentive to avoid.

   ii) Secondly, the fact is that – so far as the extradition proceedings are concerned – the Applicant has thus far failed. The District Judge's judgment of 23 June 2021 on the key issue of law (forum) was adverse to the Applicant. The case was sent to the Secretary of State who, earlier this month, notified the decision to order extradition. Nothing I say involves any provisional assessment of whether any grounds of appeal (not yet due) would, or would not, have merit. But for the purposes of the assessment of risk the Applicant may well perceive himself as in 'last chance saloon' territory and as not having a strong prospect of overturning the District Judge's analysis. It is relevant to have in mind that the High Court Family Division 5-day hearing and ruling had preceded the oral hearing before the District Judge and the District Judge's judgment. Matters relating to 'vindication', or the nature of the issue in the US indictment, have not thus far prevailed. The Applicant knows that.

   iii) The next point is that there is in this case a clear and obvious third country. This is not a case where, from the Applicant's perspective, it is the United Kingdom (this country) or the United States (the requesting state). The obvious third country in this case is India. That is where the Applicant was with his son between July 2017 and October 2020. That is where his parents and the child's grandparents are. Ms Bright submits that the Applicant would have, and perceive, no real prospect of avoiding extradition from India to the United States were he unwisely to seek to abscond to India. But, in my assessment, the Applicant may very well perceive a much better chance of resisting extradition were he to travel to India and be reunited with his son. And there is, on the face of it, nothing which in those circumstances would necessarily 'anchor' him to his parents' address and geographical location.

   iv) I have carefully considered the points made about the engagement in the Family Division proceedings and the 'vindicatory' findings of fact made in the High Court and upheld in the Court of Appeal. But, as it seems to me in assessing the risk, those findings would not 'bind' the United States courts. Nor would they, on the face of it, provide an answer to that part of the United States indictment which relates to the alleged conduct of the Applicant after 16 October 2018. What is said in that part of the indictment is as follows: that a US Court on 16 October 2018 made an order requiring the Applicant to return the child to the United States; that, knowing about that order, the Applicant wilfully and deliberately declined to comply with it; and that this was action, of retaining the child outside the United States, which was itself the obstruction of the lawful

exercise of parental rights. My observations again are not intended to grapple with issues which will be for other judges. But in the assessment of risk it is relevant, in my judgment, that the Applicant may very well perceive that the findings in this jurisdiction relating to May and July 2017, even if afforded weight by a US court, would not give him an answer so far as his conduct in and after October 2018 is concerned. That part of the US case against the Applicant – which is all about court orders and defiance of them, so far as concerns location and union with the child – are also, in my assessment, of some materiality when I am considering the risk of what the Applicant if released on bail by me would do in the present case, in the light of court-imposed conditions on him.

v) Finally, as Ms Bright in writing very properly accepted, the limited nature of the links to the United Kingdom which the Applicant has had have, on the face of it, been judicially assessed in the judgment of the District Judge dated 24 June 2021. The District Judge found as follows: that the Applicant does not have connections to the United Kingdom or family ties, except for a sister whom he was visiting for a holiday; that he has never lived here never worked in the UK; and that he was in the UK for a short visit. That is a reference to the fact that he was arrested at the airport on 2 October 2020 having arrived here with his son, they being scheduled to return to India 6 days later on 8 October 2020. The trip was for a visit to the sister. In my judgment, there is no anchoring link to the United Kingdom in this case which could serve to allay the clear concerns that arise. Indeed, such anchoring effect as there is – on the face of it – is the magnetic pull of India where the son now is.

4. In the light of all of those considerations and notwithstanding the points put forward on the Applicant's behalf, in my judgment, the presumption in favour of the grant of bail in this case is displaced, and there are substantial grounds for considering that the Applicant will fail to surrender, which are not allayed by the proposed conditions. For all those reasons bail is refused.

24.8.21