Neutral Citation Number: [2021] EWHC 2785 (Admin)

Case No: CO/3375/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING AT MANCHESTER MAGISTRATES COURT

Manchester Magistrates Court
Crown Square, Manchester M60 1PR

18th October 2021

Before :

MR JUSTICE FORDHAM

- -

Between :

SIR JOHN SAUNDERS **CHAIRMAN OF THE MANCHESTER ARENA INQUIRY**	**Applicant**
- and -	
AHMED TAGHDI	**Respondent**

- -
- -

Nicholas de la Poer QC for the **Applicant**
Richard Wright QC for the **Respondent**

Hearing date: 18.10.21
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 for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment.

MR JUSTICE FORDHAM :

1. The issue before the Court engages the inherent jurisdiction described in Hanson v Carlino [2019] EWHC 1366 (Ch) at paragraphs 10 to 11 and 22 to 23. That case stands as authority, as is not contested before me, for the proposition that this Court has an inherent jurisdiction which extends to detention of the individual, in the context of a bench warrant and that individual's arrest, where the Court is acting to secure compliance with its Orders, applying tests of necessity and proportionality.

2. The background and circumstances are as follows. The Manchester Arena Inquiry ("the Inquiry"), which is ongoing in the same court building in which I am sitting, has resulted in a notice pursuant to s.21 of the Inquiries Act 2005 ("the Act"), dated 13 September 2021, requiring the Respondent to attend the Inquiry and give evidence on 21 October 2021. Following a response from the Respondent's solicitor on 29 September 2021, the Applicant – the Chair of the Inquiry – certified 'threatened breach' pursuant to s.36 of the Act. At a hearing in the High Court last Friday, 15 October 2021, Jacobs J – acting pursuant to s.36(2) of the Act – ordered the Respondent to attend the Inquiry at 9am on 21 October 2021. Jacobs J went on to direct, by means of a bench warrant, that there be a power of arrest of the Respondent if he were to breach the order requiring him to attend to give evidence. I have seen some of the materials that were before Jacobs J, but I have not needed to go into them in any detail. I am told that an ex tempore judgment was given, on Friday at around 12:30, a written version of which is (understandably) not yet available. Jacobs J, at that hearing, considered issues relating to the appropriateness of the order directing attendance to give evidence at the Inquiry. He also, and in particular, considered the necessity for the bench warrant, itself in the exercise of the Court's inherent jurisdiction described in the Hanson case.

3. At 10:15am this morning, the same judge – Jacobs J – on a 'without notice' application by the Applicant, issued a second bench warrant: for the Respondent to be arrested and brought before this Court where submissions could be made and considered as to next steps. That was in circumstances where the Respondent had been discovered by the Greater Manchester Police to have booked a flight to Vienna which was due to leave today at 1pm. Pursuant to the second bench warrant, the Respondent was arrested at Manchester airport. He has been detained and brought before this Court.

4. The matter came on before me at just after 2pm today, by way of what was at that stage a 'mention'. That was in circumstances where it was appropriate – and in my judgment necessary – that the Respondent be represented before me, and by the same Leading Counsel who had appeared on his behalf at last Friday's hearing, this being something which – by listing the hearing for 3:30pm – could be secured. I am very grateful to Richard Wright QC who has attended before me at short notice and in those circumstances. I interpose at this point that I made a 'hybrid hearing' order to allow the hearing, which proceeded in-person, to be observed remotely by interested persons, a mode of hearing also used by this Court at last Friday's hearing.

5. I record and acknowledge that Mr Wright QC has addressed me, not only on points directly relevant to the question which I have to consider, but also has rightly reminded me of points which relate to the context in which that question arises. The Court in this case is dealing with an individual who has been deemed, by the Inquiry itself, to be a vulnerable witness. That is a position supported by a report from an expert psychiatrist. I am also told – and I accept for the purposes of today's hearing – that the vulnerability

of the Respondent includes exacerbation through previous incarceration. In a case involving the liberty of the individual it is right and proper that those matters should specifically have been drawn to my attention. I have given this case anxious scrutiny, as is appropriate in such a context.

6. Having been assisted by Counsel on both sides, and having been provided with updating material by both advocates, I emphasise that this Court is addressing questions of necessity and proportionality based on the position as it appears to me, now, and "afresh". I grapple with those questions of necessity and proportionality on that basis. Indeed, the Order (the second bench warrant) made earlier today by Jacobs J was expressly premised on the Applicant having submitted to the Court that later on, and at this hearing, representations would be made and considered as to appropriate next steps.

7. The position before me has necessarily been put forward by the advocates, but they have each done so on instructions. The position described to the Court includes the following.

   i) At some stage on Friday 15 October 2021 the Respondent made bookings with Austrian Airways and with Ryanair.

   ii) The Respondent's booking with Austrian Airways was a flight to Vienna from Manchester. It was due to take off on Sunday 17 October 2021 but at some stage that flight was deferred by one day to today. That booking was not only for the Respondent but included his sister who had been in the country for a family wedding with her children since 7 October 2021.

   iii) The Respondent's booking with Ryanair involved two further flights. The first was a flight from Vienna to Palma in Majorca. The second was a flight from Palma to Manchester. The arrival in Manchester was due to be on Wednesday 20 October 2021. I am told that Greater Manchester Police have seen evidence of the flight from Vienna to Palma. Mr Wright QC tells me that that flight was also for 20 October 2021 so that, in effect, there were two 'legs' to the return from Vienna to Manchester. Mr Wright QC also tells me that the Respondent's position is that in fact he had bought the return two 'legs' before booking the flight to Vienna. I make clear that, for the purposes of the consideration of the matters before me, I will assume – in the Respondent's favour – that what I have just recorded as having been told is the correct factual position.

8. As Mr Wright QC accepted, the central question for me today is a factual question. It is whether, based on the information before the Court, I am satisfied that the Respondent – in booking (and attempting to take) his flight to Vienna – was deliberately taking action to avoid the requirement that he attend the Inquiry, as ordered by this Court on Friday, that attendance being required for next Thursday 21 October 2021.

9. Mr Wright QC emphasises that there was no Order which had been made – or which would have been understood – to restrict travel, including international travel. He emphasises that the evidence before the Court is not of 'a flight abroad', but rather of travel arrangements entailing a return to Manchester. He emphasises that the timing of the scheduled return to Manchester was the day before the evidence was due to be given by the Respondent to the Inquiry. He emphasises that the cost of the flights will not have been insignificant, and that there were no substantial funds, and no substantial

luggage, being taken out of the country by the Respondent. Mr Wright QC submits, based on these and all the circumstances, that I cannot and should not be satisfied, so far as the central question is concerned. He submits that, in the circumstances, the "extreme" step of ordering detention – indeed, detention for a four-day period through to the morning of 21 October – is neither necessary nor proportionate.

10. I am not able to accept those submissions. In my judgment, Mr de la Poer QC for the Applicant has convincingly demonstrated, on the evidence, that it is necessary for this Court to exercise the "extreme" power – which it has – to direct the deprivation of liberty through to the date later this week on which the Respondent is required to give his evidence to the Inquiry.

11. I turn to explain the reasons that have led me to that conclusion.

    i) In the first place, there is the fact that the Respondent booked a ticket which involved him leaving the United Kingdom, on a flight to Vienna, in the period prior to the date on which he was being required to attend to give evidence to the Inquiry.

    ii) Secondly, that action of booking a flight from the United Kingdom was action taken on the very day on which this Court had considered the question of whether to compel the giving of evidence to the Inquiry and whether to make provision for a 'contingent' power of arrest should there be a failure to do so. The action of booking the flight from the United Kingdom was taken in the face of, and in the knowledge of, what the Court not only was considering, but what it had considered and what Order the Court had made. Indeed, and whatever the precise timing of the airline bookings, what is inescapable is that – on the material before this Court – those bookings took place on that same day.

    iii) Thirdly, the Respondent's conduct – viewed in light of the other circumstances – can, in my judgment, properly be characterised as actions in circumstances where the Respondent had been given "a final chance to credibly demonstrate that he would attend", paraphrasing the language in the judgment in the Hanson case at paragraph 23. That was so, in circumstances where the compulsion and coercion in the Court Order made on 15 October 2021 was – as I have described it – 'contingent'. That is to say: it was not a power involving a 'prospective' arrest and detention, imposed prior to the time for the required attendance to give evidence, whereas the Order which I will be making today does have that consequence and that character.

    iv) Fourthly, no indication had – on the face of it – been given by the Respondent of any intention to travel; nor of any benign, family-related reason for travelling, together with any reassurance in relation to plans for return. No such information had been provided to the Inquiry. No such information had been provided to the Court considering the matter on Friday. On the face of it, no such information had even been provided to the Respondent's own solicitor. As I was informed, the Respondent's solicitor at 11:16am today was informing the Inquiry that they 'would be in contact' in relation to the measures, and the appropriate approach, to be taken in relation to the Respondent's giving of evidence next Thursday. That strongly indicates that there had been no

communication between the Respondent and his solicitor about an intention to travel.

v) Fifthly, the booking of the return flight – although understandably emphasised by Mr Wright QC – cannot, in my judgment, begin to bear the weight that is placed on it. I leave aside questions of timing and the interrelationship of the various flights on which, as I have explained, I assume the factual picture most favourable to the Respondent. The booking of the return flight involved the spending of an amount of money on a step which Mr de la Poer QC rightly, in my judgment, characterises as capable of standing as an 'insurance' policy were any questions to be raised about the travel. That is to say, it is a step which would allow the point to be made that there was the 'intention to return'. In my judgment, viewed against all the circumstances of this case, the return flight booking is not of itself a step which justifies the resolution of the central factual question in the Respondent's favour. Putting it another way, it is not a feature which means the Applicant fails to discharge the onus – which, in my judgment, the Applicant has – of showing that the Respondent has taken steps to avoid the attending of the Inquiry, as ordered, to give evidence.

vi) Sixthly, and finally, all of the above points fall to be considered against a backcloth in which there had been a sustained and settled – and repeatedly communicated – intention on the part of the Respondent not to attend the Inquiry and not to give evidence to the Inquiry. I mention two instances. The first involved a response to a first s.21 notice, issued on 7 December 2020 and requiring attendance by the Respondent at the Inquiry to give evidence on 16 December 2020. In the face of that statutory notice and that requirement of attendance, the Respondent did not attend the Inquiry and did not give evidence to the Inquiry. Secondly, and more recently, in the context of the s.21 notice of 13 September 2021 – and then the s.36 certification of 1 October 2021 – the Respondent through his solicitors, on 8 and 29 September 2021, stated in terms that he would not be attending the Inquiry to give evidence. That was notwithstanding, as the solicitors confirmed, that the consequences and implications had been explained to him.

12. Those, then, are the key features of this case which have led me to conclude, looking at the circumstances overall, that I am quite satisfied: satisfied as to the key factual question; and satisfied that there is a 'necessity' for the Order that is being sought.

13. Finally, so far as both necessity and proportionality are concerned, it is right to record that the question has been raised with the Court, by both Counsel, as to whether there could be any 'acceleration' in the date for the Respondent giving evidence to the Inquiry, so as to reduce the period of any detention. Mr de la Poer QC submits, and Mr Wright QC rightly acknowledges in response, that 'acceleration' is not a course which can be put before this Court as one involving practicality or appropriateness. Indeed, there have been complex arrangements undertaken so far as concerns the timing of evidence being given to the Inquiry. I am satisfied that it is appropriate for me to take it – as I do – that 9:30am on Thursday 21st October 2021 is the first stage at which the Respondent can be expected to be accommodated within the Inquiry timeframe, in order that he play the role that Jacobs J was satisfied was justified, appropriate and necessary when he made his order last Friday.

14. I pause at that stage, having explained the reasons for the conclusion that I have reached. That will enable me to deal, with Counsel's assistance, and in such way as is appropriate, with any remaining matter. That includes the precise terms of the Order which the court should make in the light of the judgment which I have just given.

Order

15. Having been further assisted by both Counsel so far as concerns the form of the order I will make the following order and at this point in the judgment I will set out the terms of the order that I am making. It is:

    (1) The Respondent be detained in custody until the morning of 21st October 2021 in accordance with the Warrant of Detention at Appendix One to this Order.

    (2) The Respondent be transported in custody on the morning of 21st October 2021 to the Manchester Magistrates Court in sufficient time to appear in the hearing room of the Manchester Arena Inquiry for 9:30am.

    (3) The Respondent be held in custody at the Manchester Magistrates Court on 21st October 2021 (whether in the hearing room of the Manchester Arena Inquiry or in the cells) until he has completed his evidence and is released by the Chairman.

    The Warrant of Detention (Appendix One to the Order) is directed "to the Bailiffs attending on Her Majesty's High Court of Justice, and all police constables and other peace officers whom it may concern" and states: "BY THE ORDER OF THIS COURT given this day it was Ordered that AHMED TAGHDI stands detained at Her Majesty's Prison Forest Bank as set out in the Order", continuing "THIS WARRANT COMMANDS you and every one of you in Her Majesty's name to convey AHMED TAGHDI safely to Her Majesty's Prison Forest Bank to be detained there and kept in safe custody until 21st October 2021."

Postscript

16. I record that the Respondent was anxious that the Court be made aware that he says the flights were booked by his sister, as an act arising out of her concerns as to his well-being. He has also stated, directly as well as through his Counsel, that he does not stand before this Court 'convicted of any criminal offence'. That is correct. As I have explained, the proceedings before me – indeed, the coercive order made by this Court last Friday, the coercive order made by this Court this morning and now the coercive order made by this Court this afternoon – are concerned with the Applicant answering a requirement imposed on him, to attend the Inquiry and give evidence to the Inquiry.

17. Finally, I record this development. Having been updated during the early evening today that there was no capacity at HMP Forest Green, I varied the Warrant of Imprisonment in Schedule One to the Order to say "a prison or custody facility" in place of "Her Majesty's Prison Forest Bank". That variation was sought by the Applicant's legal representatives and was, rightly, not opposed by the Respondent's legal representatives.

18.10.21