



Neutral Citation Number: [2021] EWHC 3232 (Admin)

Case No: CO/3808/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

30th November 2021

Before:

MR JUSTICE FORDHAM

Between:

STANYO MARINOV
- and -
BULGARIAN JUDICIAL AUTHORITY

Applicant

Respondent

George Hepburne Scott (instructed by Bark & Co Solicitors) for the **Applicant**
Stuart Allen (instructed by Crown Prosecution Service) for the **Respondent**

Hearing date: 30/11/21
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.

MR JUSTICE FORDHAM:

1. This is an application for bail in extradition proceedings. The hearing was in person at the Royal Courts of Justice. The Applicant is aged 36 and is wanted for extradition to Bulgaria. That is in conjunction with a conviction Extradition Arrest Warrant (EAW) issued on 12 May 2021 and certified on 25 May 2021, on which he was arrested on 23 June 2021. The index offending is a series of three offences of fraud (committed aged 24-28, between March 2010 and November 2013) and an offence of fraud and money laundering (committed aged 31, in June 2017). Mr Allen has added up the amounts involved in this index offending, as described in the EAW, as US\$1.3m. The Applicant was convicted of the index offending, by a decision described as taking force on 12 November 2020. An 8-year custodial sentence was imposed. Bail has been refused in the magistrates' court, most recently by DJ Clarke on 11 November 2021. Bail is opposed on the basis that there are substantial grounds to believe that, if granted bail, the Applicant would fail to surrender, and that no bail conditions can alleviate that fear.
2. The case for bail, advanced by Mr Hepburne Scott on behalf of the Applicant in writing and orally, emphasises the following. The Applicant can be taken to have a solid home environment where he was living after his arrival in the UK on 3 January 2021. He was at that family home until his arrest on 23 June 2021 with his wife, living with their daughter, their son and daughter-in-law, and their four grandchildren. The Applicant is blind, DJ Clarke ("the Judge") having found as a fact that he has the degree of serious visual impairment which he claimed, and it would be far harder in consequence for him to abscond. He also medical conditions including diabetes, hepatitis B, high blood pressure and a heart condition. He has an extant appeal to this Court against the decision of the Judge (4.11.21) ordering his extradition. In all the circumstances, there are no substantial grounds for believing that he will fail to surrender if released on bail. Moreover, there are robust bail conditions serving to allay any concerns, including a substantial (and as it was described today "powerful") £10,000 pre-release security, an electronically monitored curfew (10pm to 4am) and the usual prohibitions on applying for international travel documents or visiting international travel hubs.
3. I have considered the bail merits afresh. I have also been assisted by both Counsel in relation to the Judge's judgment of 4 November 2021 which had unfortunately been omitted from the papers filed for my pre-reading. I am not prepared to grant bail in this case. My reasons are as follows.
4. This is a conviction extradition arrest warrant case, where there is no presumption in favour of the grant of bail. The Applicant faces an 8-year custodial sentence which stands as a substantial incentive to avoid it if possible. The index offending involves dishonesty. He has only been in the United Kingdom since January 2021. I find no substantial 'anchoring' effect in his having lived thereafter with relatives here; nor in his physical and medical conditions.
5. The Applicant was not found by the Judge to have left Bulgaria as a fugitive: there was no finding either way. Mr Hepburne-Scott emphasises that this issue has not been assessed and tested, and that a criminal standard would have applied, had it been. He submits there is "uncertainty", albeit that there is "some evidential foundation", as to fugitivity. The Applicant's evidence was that he had been on bail in Bulgaria for five

years, and the proceedings had been ongoing for seven years. There is evidence that he was very well aware of the criminal proceedings against him and had attended hearings relating to those proceedings. The Applicant accepted that he had last attended a hearing in the “summer of 2020”. At the extradition hearing, Mr Allen put to the Applicant in cross-examination that he had left Bulgaria because he was “fearful of a sentence” in relation to these matters, something which he denied. His explanation in his evidence was that he left Bulgaria out of desperation, having lost various family members, and in circumstances where the proceedings had been running on for so many years. As I have mentioned, the Judge made no finding of fact on fugitivity, in circumstances where it was not relevant to the grounds being relied on to resist extradition. Mr Allen points out that the Judge found as a fact that the Applicant – as he accepted – had attended his “trial”. That attendance was at the trial “resulting in the decision” to convict, as is recorded in the EAW. That means the Applicant attended the hearing where the evidence (relating to guilt or innocence) was being tested. The conviction followed, or at least “came into force”, on 12 November 2020. Added to all of that, the Applicant was throughout on bail. Mr Allen also points to the clear contradiction, recorded by the Judge in the judgment, which arose in the evidence relating to the Applicant’s son: the Applicant said in his evidence that the son had passed on news of the conviction and sentence in April 2021; but the son said in his own evidence that he had only learned of the conviction and sentence when the Applicant was arrested in June 2021. Mr Allen says, for the purposes of bail, that I can be confident in treating the Applicant as having left in October 2020 as a fugitive. In my judgment: it would not be right to proceed on the basis that the Applicant was a fugitive; but it is right to assess risk on the basis of there being a very serious concern that he was. The circumstances are compelling. If so, that would mean that the Applicant has already taken action to avoid facing responsibility, for these very matters, crossing borders in doing so, which he has done as recently as October 2020.

6. Next, the Applicant’s evidence in the materials before me (and before the Judge) accepts that, when he left Bulgaria in October 2020, he first travelled to Germany and only came to the UK more than three months later. He told the Judge that he was visiting family in Germany to gather together money. This feature clearly indicates a mobility, alongside a serious concern that there has been a resolve on the Applicant’s part to avoid responsibility under Bulgarian criminal process if possible.
7. So far as the extant appeal to this Court is concerned, two features are striking. The first feature is that the two grounds of appeal – oppression on grounds of health (pursuant to section 25 of the 2003 Act) and risk of inhuman and degrading treatment (pursuant to Article 3 ECHR) by reason of an inadequate response in Bulgarian prisons to his physical and medical conditions – each involve the invocation of a ‘high threshold’, not readily satisfied. The second feature is that each of those grounds is contingent, recognising that specific assurances as to suitable action – if regarded by this Court as being necessary, and if given – would be a complete answer. I am not, on this application for bail, determining the viability of those grounds of appeal. But, in the circumstances which I have described, the Applicant, whose arguments have already been rejected by an extradition judge ordering extradition, very recently (4 November 2021), may very well perceive that his resistance of extradition ‘hangs by a thread’ and is entering its ‘end-game’.

8. In my judgment, looking at all the circumstances overall, there are substantial grounds for believing that the Applicant would if released on bail – and notwithstanding the proposed bail conditions and any others that this Court could devise – fail to surrender. Bail is refused.

30.11.21