Neutral Citation Number: [2021] EWHC 3246 (Admin)

Case No: CO/4044/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

1st December 2021

Before:

MR JUSTICE FORDHAM

- -

Between :

ADAM SEBASTIAN BARANOWSKI	**Applicant**
- and -	
POLISH JUDICIAL AUTHORITY	**Respondent**

- -
- -

George Hepburne Scott (instructed by Bark & Co Solicitors) for the **Applicant**
Reka Hollos (instructed by CPS) for the **Respondent**

Hearing date: 1/12/21

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. This is an application for bail in an extradition case. The case was listed for a remote hearing for the same reasons which I explained in Boguszewski [2021] EWHC 3241 (Admin) at §2. Both Counsel were satisfied, as was and am I, that this mode of hearing by Ms Teams involved no prejudice to the interests of their clients. The interests of justice have been promoted. The case had to be put back but we were able to keep all interested observers informed by email. The interests of open justice were also secured in the usual way: the case and its start time were published in the cause list, together with an email address usable by any member of the press or public who wished to observe the hearing.

2. I will deal at the outset was one of the features of this case. When he was arrested on 24 August 2021 no passport or identity document was forthcoming from the Applicant. That gave rise to a concern, properly raised with the court by the Respondent, relevant to bail. The concern was whether the Applicant may be concealing a passport or identity document that he would then be able to use to leave the country were he released on bail. I am satisfied, for the purposes of assessing risk on this application for bail, that it would not be appropriate or just to hold against the Applicant any concern on that score. He had said that his wallet had been stolen in September 2020 and that theft was the reason why no 'passport' was available to be given to the authorities. Documents which have been provided to this court evidence: that the police held a wallet in his name together with an 'identity document' as at November 2020; and that as at August 2021 those items had been destroyed having never been collected from the police. That supports the Applicant so far as any 'identity card' is concerned. It also supports his truthfulness regarding the description that he was giving. There is, on the face of it, no discrepancy so far as concerns an application for pre-settled status (which would have needed to be supported by a passport or identity document), since his evidence describes that status as having been secured prior to the wallet being lost. The only remaining loose end is as to whether he understood himself to be asked on arrest about a 'passport' rather than an 'identity card' and whether he has ever held a passport and may be concealing one. I accept of course that a passport is different from an identity card, the latter having been usable for travel within the EU. But in all the circumstances I see no proper basis for any adverse inference or risk factor being held against the Applicant so far as a possibly concealed passport is concerned, in circumstances where his truthfulness has been vindicated in relation to the identity card. I therefore put to one side this feature of the case, properly raised with the Court though it was.

3. The Applicant is aged 44 and is wanted for extradition to Poland. That is in conjunction with a conviction European Arrest Warrant issued on 8 September 2020 and certified on 30 July 2021. Pursuant to that EAW he is wanted to serve a sentence of five years imprisonment. The index offending was an offence of driving while intoxicated and disqualified. On the material before the court the position is said to be this. The original sentence was two years imprisonment which was the subject of successful appeal and was reopened. The five year sentence subsequently imposed is recorded to have been in the context of the Applicant's previous convictions including within the previous six months for an 'intentional similar offence'. There is also a circumstance relating to a psychiatric report and a question of non-compliance. The Applicant had come to the United Kingdom in 2017 and had returned to Poland for his appeal hearing in 2018. In his evidence he has accepted that he subsequently did not comply with a court order

requirement to have a psychiatric assessment, that being the circumstance to which I have just referred. The ultimate sentence of 5 years was imposed in his absence when he was back in the UK. Bail has been refused on a number of occasions in the magistrates' court. This Court's function is to consider bail "afresh", as I do.

4. The case for bail advanced by Mr Hepburne Scott on behalf of the Applicant emphasises the following features in particular. The Applicant has been in the United Kingdom since 2017 and has lived here openly. He has a long-term relationship (some seven years) with his partner, which began in Poland. She joined him here in 2018, the year after he had first come. They have, as Mr Hepburne Scott has emphasised in his oral submissions, a young son aged 14 months, and the Applicant was in the role of primary carer for the child prior to the Applicant's arrest on 24 August 2021. That is a role that he would resume if released on bail. He is vigorously defending extradition proceedings and has the strong incentive to do so at his oral extradition hearing in the magistrates' court, due to take place on 28 January 2022. In addition to Article 8 ECHR he will be advancing an argument (which Mr Hepburne Scott links to Article 3) that the Polish sentence of five years custody for a "single offence of drink-driving" is clearly excessive and manifestly disproportionate. I interpose as a factor relevance to the case for bail that Ms Hollos confirms in her skeleton argument that it is not asserted on the half of the respondent that the applicant is a fugitive in the face of the EAW. Continuing with Mr Hepburne Scott's submissions, the Applicant is unlikely to abscond and has strongly asserted that he will comply with bail conditions and surrender when required to do so. There are 'significant protective factors' in this case. There are robust proposed bail conditions. These are: that he live and sleep at the family's flat; that there be an electronically-monitored curfew between 10pm and 5am; that there be prohibitions on attempting to visit international travel hubs or obtain international travel documents; together with a £3,000 pre-release security provided by his brother.

5. Bail is opposed on the basis that there are substantial grounds for believing that if released on bail, notwithstanding the bail conditions, the Applicant will fail to surrender or commit further offences. Ms Hollos has emphasised in her brief oral submissions the applicant's history of offending.

6. I am not prepared to grant bail in this case. In my assessment, there are substantial grounds for believing that if released on bail, notwithstanding the proposed bail conditions and any others which the Court could devise, the Applicant will fail to surrender. That assessment of itself constitutes a sufficient basis for the refusal of bail. I do not base the refusal of bail on the further objection relating to the prospect of further offending. The reasons why I have arrived at my assessment are as follows.

7. The starting point is that this is a conviction EAW case. That means there is no presumption in favour of the grant of bail. It is right that the Applicant has been in the United Kingdom for four years since 2017. It is also relevant, though, to have in mind that he has committed criminal offences in this country, the latest of which was a battery in February 2020. Other offences were in line with the index offending to which the EAW itself relates: driving under the influence of alcohol and while uninsured in October 2018; driving without a licence or insurance and under the influence of alcohol in January 2019. For all of these offences he received fines and for the January 2019 offence a 22 month disqualification from driving. A final offence in this country, for which he also received a fine, was a failure to surrender on 4 February 2019. Ms Hollos tells me on instructions that that was a failure to attend a first appearance when required

to do so. The fact that the Applicant has failed to surrender by attending when required to do so by a court in this jurisdiction, albeit in the context of domestic criminal proceedings here, is a matter which weighs in the balance when I am considering whether he would fail to surrender if released by me on bail.

8. Next, although the five year custodial sentence, said to have been increased following an appeal which reopened the previous two-year sentence, is characterised by the Applicant as being a sentence "for a single offence of drink-driving", that does not appear to me to reflect the true context. As I have already indicated, the documents refer to that sentence as having been imposed by reason of the offending having taken place in the context of previous convictions including within the previous six months for an intentional similar offence. Moreover, the index offending was not just driving while intoxicated but driving while disqualified. In other words, it was itself a breach of a prohibition which had been imposed, presumably by a court. These contextual matters have a further relevance, in the light of the legal thresholds which will be applicable to the grounds for resisting extradition, namely that the Applicant may very well perceive a fragility in his grounds for resisting extradition and, given that the oral hearing is less than two months away may perceive that is likely that he will face extradition in the relatively near future. It goes without saying, but I make clear, that I am not determining the viability of potential grounds which have not been argued before me. Rather, I am assessing risk, having regard to relevant perception, and in the context of what has been said about the vigorous defence resistance to extradition.

9. For the purposes of the assessment of risk, there is another feature which is relevant to the way in which the index offending came to be dealt with. As I have indicated, the Applicant recognises that he had returned to Poland in 2018 to attend his appeal hearing, following which the two-year sentence was reopened. He accepts that he was subsequently directed, by a court, to undergo a psychiatric assessment. He also accepts that he did not comply with that requirement. That means he has failed to comply with a court-ordered requirement, in relation to the very matters which are the subject of the EAW, preferring instead to avoid the responsibility imposed on him by a court, doing so by being out of reach and across a border (notwithstanding that it is not said by the Respondent that he became in law a fugitive). That feature also weighs in my assessment in the balance.

10. Although the Applicant and his partner do, on the face of it, have a tight-knit family unit of mutual care and support, including the carer role that the Applicant has played with the young child, nevertheless they may very well perceive that rather than face the serious prospect of a long-term rupture in that family relationship, it is a preferable option for them to seek to relocate. I bear in mind that the Applicant came to the United Kingdom a year before the partner did. I bear in mind that she has only been here three years; and that the child is very young. In the round, I cannot see in this case 'anchoring ties' which would prevent concerns regarding failure to surrender from arising.

11. The next feature of the case concerns the Applicant's record in Poland. He has a series of custodial sentences there for offences. His record includes: a robbery, theft and aggravated extortion in May 1997 (aged 19); a kidnapping offence in November 2006 (aged 29); but, most importantly for the purposes of my assessment of risk, four separate offences of breach of a court order (September 2004; March 2009; May 2009 and November 2009). In addition, the materials before the Court indicate that he had been released from custody in December 2012, but then had his parole revoked in April

2014. The index offending of driving while intoxicated and disqualified appears to have been committed just six months later.

12. Looking at the circumstances of the case overall, there are in my assessment substantial grounds for believing that the Applicant will fail to surrender if released on bail. The concerns which I have on that score are not allayed by the proposed conditions put forward. Bail is therefore refused.

1.12.21