Neutral Citation Number: [2021] EWHC 3484 (Admin)

Case No: CO/4168/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

21st December 2021

Before :

MR JUSTICE FORDHAM

- -

Between :

MONIKA KOCSIS	**Applicant**
- and -	
DISTRICT COURT OF PECS HUNGARY	**Respondent**

- -
- -

Abigail Bright (instructed by JD Spicer) for the **Applicant**
Georgia Beatty (instructed by CPS) for the **Respondent**

Hearing date: 21/12/21

Judgment as delivered in open court at the hearing

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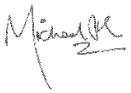
Approved Judgment

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 in a Coronavirus remote hearing.

MR JUSTICE FORDHAM:

1. This is an application for bail in an extradition case. The mode of hearing was by Microsoft Teams. The parties were satisfied, as was I, that that mode of hearing involved no prejudice to the interests of their clients. The open justice principle was secured in the usual ways. This case was listed on the published cause list, from yesterday afternoon, with an email address of my clerk, usable by any person who wished to observe this hearing. The timing of the hearing on the cause list was given as 11 o'clock, which was the original scheduled start time. It proved necessary, in circumstances relating to another hearing involving one of the same Counsel, to defer the start time to 12 noon. Had we been in a court room, any interested person would have been physically present, and would have become aware that the case was being put back. I am quite satisfied, given the email mechanism usable by any interested member of the press or public, that no difficulty has arisen from the change of time. That is because we knew and would have known, by email, if anyone had wished to observe this hearing who is not presently observing the hearing. They would then have been made aware of the later start time. I would have been made aware of any difficulty. None has arisen. I am quite satisfied that justice and open justice have been secured so far as concerns the mode of hearing.

2. This is a sequel judgment. On 7 July 2021 I refused bail, for the reasons set out in detail in a judgment which is available in the public domain: [2021] EWHC 1901 (Admin). The Applicant re-applies for bail to this Court on the basis that there has been a change in circumstances, or new considerations, reference being made by Ms Bright to section 5(6A) of the Bail Act 1976. On that premise, she asked me to revisit the bail merits "afresh"; and specifically to revisit the risk assessment that I described at the end of paragraph 14 of the July judgment, when I said: "There are, in my assessment, on the materials and in the circumstances, substantial grounds to believe that – if released on bail and notwithstanding the proposed conditions – the Applicant would fail to surrender". I have considered all of the matters and all of the materials that had been put forward to the Court by and on behalf of the Applicant.

3. Ms Bright emphasises that the extradition hearing in this case is now due to take place on 2 March 2022, having been adjourned from the more imminent hearing date to which I had referred in the July judgment. That adjournment was in circumstances where a social worker's report was not going to be ready in time for the previously fixed hearing. That social worker's report, dated 3 December 2021, has now being provided. It explains that the local authority does not have safeguarding concerns in respect of the care of the Applicant's daughter. It is not necessary for me to go into further detail. I repeat the point that I made in paragraph 15 of the July judgment that none of my reasoning in relation to bail should constrain or influence the extradition court having a fact-finding function in relation to the extradition issues. There is also further information (26 July 2021) in which the Respondent requesting authorities have addressed the availability of mental health care in the Hungarian custodial system. I have considered whether these matters serve materially to strengthen how, in my assessment, the Applicant would be likely to perceive the prospects of her success in resisting extradition.

4. In my July judgment (paragraph 6) I referred to the psychiatric report which recorded the Applicant's history of depression, a deterioration in her mental health and a present diagnosis of moderate depression. Central to the suggested change in circumstances, or

new considerations, as relied on before me is an addendum report of the same psychiatrist. It was written on 1 November 2021, after an assessment by video link on 13 October 2021 and after a review of electronic medical records and an updated proof of evidence of the Applicant. The addendum report records the opinion that the Applicant's mental health has deteriorated considerably since the last interview and assessment, with the development of auditory hallucinations (voices), persecutory ideas, and suicidal ideas and intentions, further to the depressive symptoms she previously presented. The addendum report refers to a diagnosis of psychotic depression as being a possibility.

5. Ms Bright submits that bail should now be granted by this court on proposed conditions. Those conditions are essentially those which were previously considered (see the July judgment at paragraph 5), except for a lower pre-release security now of £3,000. I make clear that no change relating to the proposed bail conditions is material, in my judgment, in the assessment of the bail merits. I do not hold against the Applicant the fact that the circumstances have led to the need to reduce what can be offered by way of pre-release security. I have also had in mind the question of what other bail conditions the Court could realistically impose.

6. Ms Bright submits that there is now a "cogent and compelling" basis for granting bail, having regard to all the circumstances, looking at the matter afresh, and remembering that this is an accusation extradition warrants case in which a presumption in favour of the grant of bail arises. Ms Bright emphasises that the Applicant has "cooperated on every occasion" with the psychiatrist, and can be taken to be "acutely aware" of her reliance on that material and the other material in the case in her endeavours to resist extradition.

7. I turn, then, to my assessment of the materials placed before the Court. So far as the mental health deterioration is concerned, the position is that the psychiatrist was able to alert the mental health team at the prison, to speak to the team leader there, and to make contact with the consultant psychiatrist. Having explained the Applicant's presentation and symptoms, the consultant psychiatrist confirmed that she would arrange for the mental health team to assess the Applicant. An email from the consultant psychiatrist on 23 November 2021 confirms that the Applicant is prescribed antipsychotic and antidepressant medications, that she is regularly seen by a prison psychiatrist and a prison psychiatric nurse, and that she has been intermittently managed under the prison ACCT (Assessment, Care in Custody and Teamwork) service. I accept Ms Beatty's submission that the Court can take it that the Applicant's mental health condition is understood by those with responsibility for her well-being within the prison system, as the psychiatrist was naturally concerned that it should be, that she continues to receive appropriate treatment and that the prison is aware of the risk of self-harm.

8. The critical question, in my judgment, concerns the assessment of the risk so far as the prospect of failure to surrender is concerned. Ms Bright is right to focus on the final sentence in paragraph 14 of the July judgment (quoted earlier). She urged me to revisit that evaluation and I have done so. Having done so, I am not prepared to grant bail in this case. The latest information before the Court does not prevent from arising the same concerns as to the substantial grounds for believing that, if released on bail and notwithstanding the proposed conditions, the Applicant would fail to surrender. I set these out, in detail, in the July judgment. They are all still present. I am not satisfied that the risk of absconding has changed in any material way by reference to the latest

evidence and concerns. That is not a question of adopting an 'entrenched position' which new material 'fails to dislodge'. It is simply a question of the very same considerations, arising for the very same reasons, as I described them previously. In those circumstances, consideration "afresh" does not drive the need to repeat in another detailed judgment what the particular features of this case are that relate to the assessment of risk. I adopt them, on the basis that – having thought about them again – they remain, in my assessment, applicable. They are not, in my assessment, answered or affected by the other material, and in particular by the new material. It is sufficient to say that the social worker's report does not lend any further support to the idea of the daughter as a strong 'anchoring' feature (see the July judgment paras 12-14). Nor does the current picture relating to mental health and reliance on mental health, alongside other features in resisting extradition, serve to strengthen the Applicant's position, or undermine the force of the concerns raised by the respondent, or dilate the force of the points described in the July judgment. For all these reasons, the application for bail is refused.

21.12.21