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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2023] EWHC 2376 (Admin)



No. CO/2672/2023

Royal Courts of Justice

Tuesday, 8 August 2023

Before:

MRS JUSTICE FARBEY

B E T W E E N :

SYED

Applicant

- and -

GOVERNMENT OF SWITZERLAND

Respondent

MR A JONES KC and MR M HENLEY (instructed by Freemans Solicitors) appeared on behalf of the Applicant.

MR N HEARN and MS H BURTON (instructed by the Crown Prosecution Service) appeared on behalf of the Respondent.

J U D G M E N T

MRS JUSTICE FARBEY:

- 1 The applicant was born in Hyderabad in India on 23 April 1973. He has applied to the High Court for bail following the decision of District Judge McGarva on 4 July 2023, under Part 2 of the Extradition Act 2003, to send the case brought by the respondent under section 87(3) of the Act to the Secretary of State for her decision whether to make an extradition order.
- 2 The Government of Switzerland requests the applicant's extradition to stand trial in respect of what may be broadly described as an alleged advance fee fraud. The request was made on 22 July 2022 and was certified by the NCA on 27 September 2022. The applicant was arrested on 30 November 2022, produced at Westminster Magistrates' Court and refused bail.
- 3 The Secretary of State issued the required certificate under section 70 of the 2003 Act on 21 December 2022. The applicant was again refused bail on 23 January 2023 and 15 May 2023. The extradition hearing took place on 1 and 2 June 2023 before the District Judge at Westminster Magistrates' Court. The District Judge reserved judgment and bail was again refused. In a judgment dated 4 July 2023 the District Judge sent the case to the Secretary of State.
- 4 The details of the extradition request are summarised towards the beginning of the District Judge's judgment. He says:

"The request is based on an arrest warrant issued by Marcel Scholl on 2 December 2022 for offences of commercial fraud, the maximum sentence is 10 years in prison. The requested person is accused of obtaining around 28-6 million CHF (around £25 000 000 sterling) from 23 aggrieved parties between September 2010 and May 2011. The essence of the allegation is that the requested person purported to be able to grant very large loans and requested payment of various fees for facilitating these loans, these included a due diligence check and insurance payments. The aggrieved parties paid the fees but never received any loans. It was an advance fee fraud. The limitation period expires on 1 May 2026."

The District Judge discharged the applicant in relation to two of the allegations on the basis that there was not dual criminality and sent the case to the Secretary of State on the basis of 21 allegations.

- 5 The application for bail before me says that the applicant would be willing to comply with the following conditions:
 - (a) To live and sleep each night at an address in Kensington.
 - (b) To be subject to an electronic curfew at a time to be considered by the court.
 - (c) To provide a security of £150,000.
 - (d) To allow his passport to remain in the possession of the police.
 - (e) Not to apply for international travel documents.
 - (f) Not to attend an international travel hub.

(g) To keep his mobile phone charged continuously.

6 On behalf of the applicant, Mr Alun Jones KC with Mr Martin Henley submits that the applicant is not a flight risk on a number of principal grounds. First, he relies on the finding of the District Judge at paragraphs 71 to 73 of the judgment that the applicant was not proved to be a fugitive. That finding, he submits, is material and significant to the assessment of the flight risk. It marks a departure from the situation in bail applications before the Magistrates' Court because at that stage the court would have proceeded on the basis of the respondent's case that the applicant was a fugitive.

7 Next, Mr Jones submits that it is a remarkable feature of this case that the authorities in Bahrain have, following a judicial process, already dismissed criminal proceedings against the applicant. Not only were the proceedings judicial in nature but the applicant was interrogated as part of the process. He relies on the District Judge's findings at paragraph 78 of the judgment:

"Having reviewed the documents it is clear that the case in Bahrain did relate to the same victims and the same allegations and that a decision was made that there was insufficient evidence to warrant a prosecution and that in effect the case was a civil one. This was a judicial decision following an investigation which received evidence from the victims and in which the requested person was interrogated. The prosecutor seems to be acting in a judicial capacity just like the Swiss prosecutor."

At paragraph 84 the Judge went on to say:

"There is an important principle at stake of not subjecting persons to repeated prosecutions on the same facts. It is clear that the three cases in Bahrain were based on substantially the same facts [ie as now alleged against him]."

Mr Jones points out that the respondent does not now contend anything different.

8 At paragraph 96 of his judgment the District Judge said:

"It is true that there has been a significant delay in this case. The requested person is not a fugitive so he can rely on the delay. That said the delay is not out of the ordinary in substantial fraud cases. The fact that the requested person has had to endure an investigation in Bahrain is something of a '2 edged sword'. It is true that he has had to endure questioning already but that means he is well aware of the allegations and will have been able to preserve the documents that assist his case."

Mr Jones relies on this part of the District Judge's judgment to reinforce his submission that the Swiss proceedings would, for all intents and purposes, be the same as the Bahraini proceedings and based on the same evidence.

9 Mr Jones further emphasises that, save for a travel ban, which the applicant claims to have adhered to, he was subject to no restraints or conditions before being discharged from the criminal proceedings. Mr Jones submits that this shows that he was trusted by the Bahrain

- authorities - and could properly be trusted - as his full participation in those proceedings also demonstrates.
- 10 Mr Jones next submits that there are plain and apparent defects in the District Judge's reasoning and conclusions on legal questions, primarily on questions of double jeopardy. He submits that these defects are relevant in two ways. First, they give rise to important questions of law which will inevitably take a significant time to be ventilated in this case on any appeal. Secondly, the strength of the applicant's arguments on appeal is relevant to the question of whether he represents a flight risk and whether this court should grant bail. There are also good arguments to make to the Secretary of State on speciality, which will take time for the Secretary of State to consider. The applicant has a good "passage of time" argument in light of the Swiss authorities' delay in issuing an international warrant which could on the evidence (it is submitted) have been issued years earlier.
- 11 Mr Jones relies on the fact that the applicant has reached his middle years as a person of good character. Before his remand in custody he would travel in and out of the UK on a regular basis on genuine travel documents. The main family home is in London (it is said) as the applicant's three daughters are all at various stages of their education here. The applicant's acquisition of Turkish nationality was not sinister and was not found by the District Judge to be sinister. It simply reflected the convenience and comparative expedience of a Turkish passport over an Indian passport. There is no more possibility of avoiding extradition on a Turkish passport than an Indian passport. It is submitted that the applicant's links to London flow naturally from his previous time spent living here between 2001 and 2006. Irrespective of his immigration status as a visitor he has made his main home in London.
- 12 On behalf of the respondent, Mr Nicholas Hearn with Ms Hannah Burton opposes the application contending that there are substantial grounds for believing that the applicant would, if released on bail, fail to surrender to custody. He emphasises that the period for prosecuting the applicant for alleged offending expires on 1 May 2026. The applicant's self-interest in delaying his extradition in the meantime, if needs be by absconding, cannot sensibly be contained by any conditions, even stringent ones.
- 13 Mr Hearn submits that the applicant is in a demonstrably worse position than before the Magistrates' Court because he now has an adverse judgment from that court. This court should not assess his prospects of success on appeal and (in light of the limitations on appeal rights) should not assume that permission to appeal would be granted. I was told by Mr Hearn that the Secretary of State intends to reach a decision on the case by 4 September 2023. Thereafter permission to appeal may be expeditiously dealt with. If refused there would be no recourse to the Supreme Court, so that far from taking a substantial time to complete, the extradition process may have been completed by the end of this year.
- 14 As this is an accusation case the presumption of bail applies. Considering the matter afresh, as I am bound to do, I have reached the conclusion that, despite the conditions of bail offered, there are substantial grounds to fear that if released the applicant would fail to surrender.
- 15 The District Judge found that the respondent had not proved that the applicant was a fugitive in the sense that he was not sure that the applicant had left Switzerland with the intention of placing himself beyond the Swiss legal process. He co-operated with the Bahrain investigation. These factors weigh to a certain degree in favour of bail but, in my judgment, they are considerably outweighed by other factors.

- 16 The applicant held an Indian passport until its expiry on 11 March 2019. On 27 July 2021 he renounced his Indian citizenship as he had by then acquired Turkish nationality. He is now an Overseas Citizen of India which entitles him to enter India freely for both business and social purposes. He has previously lived in Bahrain and has a 10 year visit visa to the UK, which permits him to remain in the UK for up to 180 days per year. He claims to be settled in the UK but his proof of evidence does not say that he or his wife have been granted settlement. They both have multi-entry visit visas which do not provide them with any secure or permanent future in the UK.
- 17 The applicant has substantial ties with at least Turkey, India and Bahrain. He is now a Turkish national. Turkey does not extradite its citizens, except under obligations arising from being a party to the ICC. The applicant disavows the proposition that he changed citizenship for the purpose of avoiding extradition. Even if he did not change his citizenship for strategic reasons, it remains a factor - to which I give considerable weight - that he is a national of a country which would not extradite him. He accepts that a Turkish passport would give him access to a greater number of countries than an Indian passport.
- 18 Conversely, the applicant's ties to the UK are shallow. Without producing any independent evidence he claims to have resided in London between 2001 and 2006; on his own account he then left. He does not have settled status but had, before his arrest, made repeated visits to London. None of his family members appear to be settled in the UK or to have British citizenship. His wife and children have Turkish nationality. The applicant's wife appears from the documents in the bundle to have rented accommodation from 22 December 2022. However, a fresh tenancy agreement from August 2023 was handed up to me today which terminates on 31 December 2023. This address is put forward as the bail address but it is notably short-term accommodation in a serviced apartment. It appears that when he was arrested, the applicant was living in other rented accommodation.
- 19 As Mr Hearn has stressed, the alleged offending is serious, large-scale sophisticated fraud causing loss of approximately £25 million. The maximum sentence available on conviction would be 10 years' imprisonment. It is well-established that the seriousness of the offending is a consideration to be weighed in the balance but is not itself a ground for refusing bail. In my judgment, the seriousness of the charges which the applicant faces in Switzerland provides a strong incentive for him to abscond and he would have the cross-border ties to do so. The limitation period is not imminent but is in context coming close. That would provide an incentive to avoid extradition including, if needs be, by absconding.
- 20 I do not accept that there is a direct or useful comparison between his situation in Bahrain, and his situation if released on bail in London. I accept Mr Hearn's submission that at no point in Bahrain was the applicant under bail conditions when at risk of extradition.
- 21 As for the position in Switzerland, it appears that the applicant is more likely to be granted some form of liberty if he were to consent to extradition. That position is not surprising nor, as intimated by Mr Jones, unprincipled. The more important point is that the applicant is not in any event consenting but persists in seeking to appeal the District Judge's decision. Any benefits of consenting to extradition would not be bestowed on him.
- 22 Although the applicant does not accept the outcome of the extradition proceedings before the District Judge, Mr Jones properly accepts that a High Court bail application is not the appropriate forum for an examination of factual detail. On the legal merits of any appeal, I am not persuaded that the District Judge's analysis of any material issue was so egregiously wrong that it should weigh in the scales in favour of bail. At any rate, nothing has been

drawn to my attention in the District Judge's reasoning that would outweigh the factors against the grant of bail at this stage.

- 23 These various factors mean that, despite the conditions offered, there remain in my judgment substantial grounds to believe that if granted bail the applicant would fail to surrender to custody. I should add that there is nothing in the nature of his family or other ties in the UK that would make it disproportionate for him to remain in custody.
- 24 This application is dismissed.
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CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.