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[2023] EWHC 372 (Admin)

No. CO/60/2023

IN THE HIGH COURT OF JUSTICE



KING'S BENCH DIVISION

ADMINISTRATIVE COURT

Royal Courts of Justice

Thursday, 12 January 2023

Before:

MR JUSTICE JULIAN KNOWLES

B E T W E E N :

KEITH HOWARD

Applicant

- and -

JUDICIAL COURT OF LILLE (FRANCE)

Respondent

MR B SEIFIRT appeared on behalf of the Applicant.

MS A BOSTOCK (instructed by CPS Extradition Unit) appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE JULIAN KNOWLES:

1 This is an application for bail by Keith Howard under section 22 of the Criminal Justice Act 1967 following refusal of bail in the Magistrates' court. Bail was previously refused on 28 September 2022 when a security of £20,000 was offered, on 5 October 2022, when £55,000 was offered, and on 28 December 2022 when an increase in the offered security to £64,000 was not deemed to be a change in circumstances so as to permit a further application for bail to be made.

2 The applicant's extradition hearing is due to take place on 27 January 2023 at Westminster Magistrates' Court. It is common ground that the application before me is *de novo*. I am not looking for an error in the decisions of the court below. I need to decide the matter for myself.

The extradition request

3 The applicant is sought under an arrest warrant issued on 8 August 2022 by a French judicial authority and certified by the National Crime Agency ("the NCA") on 6 September 2022. His return is sought to serve the remaining three years, four months and eight days of a sentence of four years' imprisonment imposed on 21 June 2022 by the Criminal Court in Lille for the following offending. On 6 October 2017, being concerned in the sale or transfer of eight guns, three silencers, and six magazines alongside 34 kilograms of cocaine and 6.5 kilograms of heroin. The applicant acted as an escort to the delivery alongside his brother and others. Box D of the warrant explains that the applicant was not present at his trial, but is or will be entitled to a retrial in the event he returns to France.

4 Box E states as following:

"In the contexts of the execution of two European investigation decisions by the British authorities, the police were conducting physical surveillance of Simon Pellett on national territory. On 6 October 2017 a trailing of his Ford Transit vehicle was carried out to the commune of Lune Pelage where he got in touch with an individual using a British Volkswagen Passat, David Baker, who was loading three bags into the Ford Transit. This transaction was carried out under the surveillance of two men parked nearby in a British Volkswagen Gold, Alex Howard and Keith Howard. The police proceeded to arrest the four men. In the three bags loaded in Simon Pellett's vehicle investigators found 34 odd kilograms of cocaine, 6.5 odd kilograms of heroin, two revolvers, six automatic pistols, 6 magazines and three silencers. David Baker explained that he had been recruited to pick up the bags in Belgium and deliver them after a convoy arrived with Alex Howard and Keith Howard. Simon Pellett, Alex Howard and Keith Howard acknowledged that they had been asked to escort David Baker's vehicle, but without knowing the load."

5 The three other defendants were extradited to the UK where they were tried and convicted at Isleworth Crown Court and received very much longer sentences than did the applicants in France. Those sentences ranged from over 10 years to over 23 years. The applicant, in contrast, remained under investigation in France.

6 Further information dated 3 November 2022 from the French judicial authority explains as follows.

"(a) The applicant asserted within the French proceedings that he was not aware of the contents of the vehicle he was escorting."

7 At page 6 to 9 of the judgment which was appended to the further information, the trial court rejected this evidence and found him to have been fully aware of the contents of the vehicle.

"(b) The applicant was incarcerated between 9 October 2017 and 31 May 2018. He was released under judicial review on 31 May 2018 until the hearing. He was required to notify the judge of his residence address and to pay a bail security of €5,000."

The further information states:

"Because he was indicted he had to indicate to the judge his new address.

(c) The applicant is considered in France to be a fugitive from the French court as he did not attend the hearing and did not provide his new address. His lawyer withdrew as she had not heard from him."

8 That is at p.2 of 11 of the judgment. Again, the further information states:

"The French jurisdiction considers that he is a fugitive because he was not present at the correctional hearing and there was no counsel for him. He had not given his new address."

Submissions

9 On behalf of the applicant, Mr Seifert submitted in summary the extradition request is to be defended on a number of meritorious bases including passage of time. He asserted in particular that the applicant is not a fugitive, so he is not precluded from relying section 14 of the Extradition Act 2003, it being trite extradition law that a fugitive from justice cannot rely on the passage of time caused by his flight. The test of being a fugitive is subjective. Here, the applicant came back to England and resumed his life. He continued working. It cannot be shown he knew and intended to place himself beyond the reach of the French authorities.

10 Orally, in particular, Mr Seifert also raised an issue that he said may be litigated by way of the abuse of process jurisdiction at the extradition hearing as to why the three co-defendants were extradited back to the UK for trial here leading to at least in one case an acquittal on the firearms charges, whereas Mr Keith Howard remained under investigation in France. Mr Seifert pointed out rightly that the applicant is 53 and only very lightly convicted, in fact mainly with a number of cautions. He lives in Kent. He has a teenager and grown-up children. After spending time on remand in France, he was released and given his passport

and told never to return to France. Mr Seifert said the Applicant's evidence as recorded in his unsigned proof of evidence is that he thought that matters in France were at an end. Mr Seifert also pointed out that there is good character evidence about the Applicant, including work opportunities available to him, and that he also has good community ties in the United Kingdom.

11 Mr Seifert said there is a substantial security and offer of £65,000 which had been put up by his mother, which was a sign of the trust that she has in him. Mr Seifert also advanced the usual other package of suggested bail conditions, including surrender of travel documents, not to go to international travel hubs, a curfew and signing on at a police station.

12 On behalf of the respondent, Ms Bostock submitted there are substantial grounds to believe that the Applicant would, if granted bail, fail to surrender and that no conditions can alleviate this risk. She made the following points in particular. First, he has been convicted of very serious offending as part of an organised crime group for which a significant sentence has been imposed. There is as such no presumption in favour of bail, and he is therefore effectively at the moment currently a serving prisoner, the time on remand here counting towards his sentence in France. She said that given the history in France I should conclude that he did knowingly flee France to avoid proceedings without providing an address, and that in effect I should accept at face value the assertion in the further information by the French judicial authority that he is a fugitive. Therefore, says Ms Bostock, he has already proved that he is not an individual who can be trusted on bail. He has also proved that he is not willing voluntarily to participate in proceedings. The French warrant, Ms Bostock points out, says the address is unknown. She says he may have given an address but did not update it. This was in answer to a point made by Mr Seifert that it was odd, if a condition of bail was that he provide an address, that he was released without providing an address. Ms Bostock says the explanation may have been that he gave an

address that he was found not to be living at and that he had not updated it. In any event, she said, as I have already indicated, I should accept at face value what the French say, that he is indeed a fugitive.

- 13 Ms Bostock also said that given the transnational nature of this offending as revealed by the judgment of the trial court, which was appended to the further information, he has international connections which could assist him to flee to avoid a lengthy sentence.

Discussion

- 14 I regret that I am unable to accede to Mr Seifert's submissions, well put though they were. In my judgment, the nature of the offending, together with the history of the applicant not complying with his bail conditions (and I do accept at face value what the French say at this stage as to what occurred in France) mean that there is an unacceptable risk that he would fail to attend his extradition hearing no matter what conditions were to be imposed.
- 15 I have reached that conclusion for the following reasons. First, his offending was very serious. Anything involving guns and drugs always is. The applicant might consider himself fortunate that he was not extradited to the UK for trial. If he had, and had been convicted here like his co-accused, he might well be facing a substantially longer sentence than he is already. It will be open to Mr Seifert, if he thinks there is merit in the point, to make submissions about the split nature of the prosecution as between the three co-defendants and this applicant at the extradition hearing. However, before me, for the purposes of today, I am not persuaded that there is anything in this point that bears on the question of bail which ultimately turns on whether I can be satisfied that there is a package of conditions sufficient to ensure that the applicant will attend his extradition hearing throughout the length of time that they last, however long or short that time is.

16 Second, Mr Seifert may be right that there are good grounds to defend extradition, but as he accepted, and as is clear in any event, I cannot determine the merits of those grounds today. They will fall to be litigated in just over two weeks' time before a District Judge at the Westminster Magistrates' Court. If Mr Seifert is right on one or more of his grounds, the court will say so, and the applicant will be discharged.

17 Third, I feel at the moment, and on the material that I have, as I have said, I am bound to accept as the French say that the applicant did leave France in breach of his bail conditions in order to avoid proceedings. Mr Seifert advanced a number of forensic points on the paperwork, but again these will fall to be litigated before the Westminster Magistrates' Court. For me, for today, there is an express statement from the French judicial authority to the effect that the applicant is a fugitive.

18 I reject the assertion put forward in the Applicant's unsigned proof of evidence that he thought matters were at an end. I accept that there may have been difficulties in taking instructions from the Applicant for any one of a number of reasons, not least of which is incarceration and also postal strikes and the like. However, the contention that is put forward on his behalf that he thought the proceedings in France were at an end seems to me to fly in the face of the conditions to which he was subject and from which I think it must have been clear to him that proceedings were not at an end. Furthermore, he had the assistance of a lawyer, and if he was in any doubt about his status, he could have sought clarification from him. It will be open to the Applicant at the extradition hearing to give evidence on oath if he chooses and be cross-examined on this issue to try and prove that his belief that the proceedings were indeed at an end was genuinely held, but at the moment on the material before me, I am not able so to conclude. I do accept that the security is substantial. I do accept he has community and family ties in the United Kingdom, but the Applicant stands convicted at the moment of being part of an international crime group

involved in drugs and gun-running. It is, as I have said, very serious offending and would provide a temptation to him, it seems to me, to flee particularly if, in the currency of the extradition proceedings, he feels they are not going his way.

19 Mr Seifert advanced the submission on the basis of a case called *Merticariu*), which is concerned with section 20. Permission to appeal, as I understand it, has been granted by the Supreme Court in relation to the application of section 20 which concerns trials in absence. Mr Seifert advanced the submission that the decision of the Supreme Court may benefit the applicant in due course. I am told that permission was granted by the Supreme Court in *Mertacariu* towards the end of last year and on the basis of my experience and general knowledge of the Supreme Court, it therefore seems to be the case that the appeal will not be heard before the later part of this year, with some time thereafter for judgment to be given.

20 In short, it seems to me that Mr Seifert's submission on the basis of *Metacariu* and whether it will or will not benefit this applicant is speculative. Ms Bostock also made the point, which does have some force, I think, that if *Metacariu* were to go against the applicant and make his position worse, that would simply serve to increase the temptation on him not to remain in the United Kingdom and be extradited to France.

21 For all of these reasons I refuse bail. The Applicant, as I have said, does not now have long to wait before his case will be resolved at Westminster Magistrates' Court.

CERTIFICATE

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