Case No: AC-2024-LON-003849

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

Neutral Citation Number: [2024] EWHC 3373 (Admin)

The Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 13 December 2024

BEFORE:
SIR PETER LANE
(sitting as a Judge of the High Court)

BETWEEN:

(1) W
(2) X
(3) Y
(4) Z

Claimants

-and-

CROWN COURT AT CROYDON

Defendant

-and-

LONDON SOUTH CROWN PROSECUTION SERVICE

Interested Party

MR FORTE (instructed by Abbey Solicitors on behalf of the Claimants.
THE DEFENDANT did not appear and was not represented.
MS SCHUTZER-WEISSMANN appeared on behalf of the Interested Party.

JUDGMENT

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(Official Shorthand Writers to the Court)

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1. SIR PETER LANE: This is an application for permission to judicially review the decision of HHJ Hyams-Parish on 18 November 2024, sitting at Croydon Crown Court, when he refused to grant bail to the four claimants. If permission to bring judicial review is granted, the court is to proceed to determine the judicial review. This is because, on 2 December 2024, Freedman J ordered a rolled-up hearing. He also made an order for expedition.

2. Before going any further, it is necessary to make reference to Article 5 of the ECHR, which so far as material reads as follows:

> "5.1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> > (a) the lawful detention of a person after conviction by a competent court;
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> > (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
> >
> > (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
> >
> > (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
> >
> > (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
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> …
>
> 5.4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful".

3. Bail is governed by the Bail Act 1976. In particular, a person charged with a criminal offence is entitled to be admitted to bail unless the court is satisfied that an exception to the right applies, such that even conditions cannot address them: see sections 4 and 5 in schedule 1.

4. The test that the court is required to meet in determining whether an exception to the right of bail exists is whether "there are substantial grounds for believing that" a relevant ground exists. The grounds are failing to surrender to custody, committing further offences, interfering with witnesses or obstructing the course of justice. There is a requirement to give reasons for a decision to refuse to grant bail or impose conditions: see section 5.

5. While the court must consider whether a person remanded in custody should be granted bail at every hearing when they appear, the right to advance arguments as to fact and law is limited to the first such consideration, unless the court is satisfied there has been a material change in circumstances: see *The Queen v Dover and East Kent Justices, ex parte Dean* [1992] Crim LR 33.

6. I turn to the background of this case. In so doing, I draw upon material from the interested party's detailed grounds of defence.

7. IK was born in June 2005. She suffers from epilepsy and has learning and communication disabilities. At the material time, she had a boyfriend, called RA for these purposes. In the autumn of 2023, IK reported to her college mentor that she was having problems with her family at home and that her brothers had been telling her that she need not go to college any longer as she was going to be married in Pakistan. IK appeared to be fearful of the family and of being assaulted by her brothers. She told the college that her family did not know she had a boyfriend. The college put in place a policy that her brothers should only be told about her academic progress rather than about any other aspects of her life. IK's mentor also noted at that time that she was fearful of her family and of being assaulted by her brothers. In early 2023, IK used the college to assist in obtaining her passport for entering a refuge. In the event, she did not do so.

8. In late March 2024, the prosecution say that IK again sought help from her college, telling a member of staff that she was worried because her family had booked flights to Pakistan on 3 April 2024 and her brothers had told her that she would be marrying her cousin. On 28 March, IK arranged to enter a refuge. She took her epilepsy medication with her and did not reach the refuge in time. With the help of her college again, she obtained a room for the night at a particular hotel in Croydon. Her boyfriend of three years took her there and, when she was settled into her room, he left her.

9. In the early hours of the morning of 29 March, it is said there was a banging on her door. IK called her boyfriend and put him on Facetime, so he could see what was happening. When she opened the door, she saw three of her four brothers and her sister-in-law outside her hotel door. They forced her out of the room. CCTV from the hotel is said to show some of what happened. She was forced against her will to leave the hotel, put into a car and taken back to the family home.

10. In the family home, her phone was examined and her brothers are said to have repeatedly called her a "whore" for having a boyfriend, bringing shame and unhappiness to her mother. She was assaulted by W, X and Z, one of whom was using, it is said, a screwdriver as a weapon. Her boyfriend was threatened by her brothers via a mobile telephone that she had. However, IK managed to secrete her phone into the bathroom from where she made a 999 call. The police then attended, brought her to safety and she then explained about what she said had been the attitude and behaviour of her family. She also described being intentionally strangled by X in the summer of 2023.

11. The defendants were arrested at the property on 29 March. A search there brought to light various chains and knives said to be secreted in a bag. There was also evidence that flights were booked with an airline for IK and other family members to go to Pakistan on 3 April 2024, returning on 29 April.

12. The claimants were charged with offences in March 2024. The custody time limit (a CTL), which applied to all of the charges, was 3 September 2024. The claimants first appeared in the magistrates' court in April 2024 and bail was refused. They were remanded into custody.

13. Court extracts record that bail was refused on the grounds that the magistrates were satisfied that W and X would fail to surrender and commit further offences and that Y and Z would commit further offences arising from the seriousness of the case and the strength of the evidence.

14. At the first hearing at the crown court on 29 April 2024, a trial date of 7 October 2024 was identified as the earliest date available for a trial lasting seven to ten days. All the parties were put on notice that an application to extend the CTLs would be made.

15. The claimants' defence statements were served in July 2024. They contained requests for disclosure of full downloads of mobile telephone data. The prosecution, it is said, purported to comply with its disclosure obligations between July and August 2024. Requests were raised at various hearings thereafter and were, in part, said to be dependent on information from the claimants as to access to the devices. On 2 August 2024, an application to extend the CTLs was made and not opposed and the CTLs were extended until 10 October 2024.

16. Section 28 of the Youth Justice and Criminal Evidence Act 1999 was then used to pre-record the cross-examination of IK. That took place on 19 September 2024, with a closed public gallery. It appears that by this point IK was under the protection of the police in a place of safety.

17. A hearing was listed for 2 October 2024 for all parties to confirm that the case was ready for trial. The certificate of trial readiness was served on 6 October 2024. No applications were made pursuant to section 8 of the Criminal Procedure and Investigations Act 1996 seeking an order that telephone data be disclosed.

18. The trial began on 7 October 2024. A jury was sworn and the claimants put in their charge. The case was opened. On 8 October, however, the jury was discharged for reasons connected to the jury, not the parties. A second jury was then empanelled and sworn on the same day. The claimants were put in their charge. The evidence of IK was led.

19. On 8 and 9 October 2024, complaints about late disclosure became an application by the claimants to discharge the jury. The interested party opposed the application on the basis that the data was accessible. It could be reviewed within the trial window with no

prejudice to the claimants' fair trial rights. On 10 October 2024, the application was, however, granted. The trial was refixed for 14 July 2025, the claimants' trial counsel not being available on the date that had been offered in March 2025.

20. On 23 and 24 October 2024, the claimants, W and Y, lodged detailed written applications for bail, relying on the fact that the trial had been aborted and refixed as a change of circumstances. The bail hearing listed on 25 October 2024 was vacated by the court with an indication that the trial judge would be giving directions. On 1 November 2024, Y served an amended application. On 15 November, X and Z served detailed written applications. All four applications were listed and heard together on 18 November 2024. The prosecution opposed the applications on the basis that all three exceptions to the bail applied to all four claimants. In argument, the claimants relied, amongst other things, upon Article 5 of the ECHR. The application was refused.

21. I have today seen a transcript of the hearing before the judge. After receiving oral submissions on behalf of the claimants, this is what the judge said:

> "Well dealing with the bail applications which have been submitted by four defendants: W, X, Z and Y. I make clear that I have read the carefully prepared submissions which were provided on behalf of all of the four defendants. I have also considered carefully the applications made in respect of each of them and I have considered carefully the conditions that have been proposed on behalf of each of the four of them.
>
> I, of course, have the advantage of knowing about this case having been the trial judge and having sat on the Section 28 and listened to the opening, I am very familiar with the evidence.
>
> I recognise full well that these defendants are of good character. I am also conscious of the fact that the four defendants face very serious charges of an honour-based kidnap. But the facts of this case, the evidence in this case, the circumstances of the case, leave me with substantial grounds for believing that each of the defendants will fail to surrender, interfere with witnesses and commit further offences. And so those - I do not believe that there are conditions that are provided or can be offered by the defendants which are sufficient to allay those concerns. So I am refusing bail on all three of those grounds. Thank you very much".

22. The ability to challenge a bail decision in the crown court is limited. Until April 2004, the High Court held a general inherent power, which was usually exercised by a judge in chambers, to grant bail to a person denied bail in the magistrates' court or the crown court. That power, however, was abolished by section 17 of the Criminal Justice Act 2003. Since then, there is no avenue of appeal against a refusal to grant bail, save for a High Court jurisdiction to entertain challenges to irrational decisions through judicial review: see section 17 of the Criminal Justice Act 2003. The jurisdiction of the High Court is, however, limited by section 29(3) of the Senior Courts Act 1981, which excludes judicial review of the crown court "in matters relating to trial on indictment".

23. The ambit of section 29(3) has been explored in a number of cases. In *The Queen v Manchester Crown Court and others, ex p DPP* [1994] 98 Crim App R 461, Lord Browne-Wilkinson in the House of Lords explained that the policy behind the exclusionary rule was the need to avoid delay in criminal trials. There was no test but, rather, “pointers”, including where the decision sought to be reviewed was not one arising in the issue between the Crown and the defendant formulated by the indictment.

24. In *M v Isleworth Crown Court* [2005] EWHC 363 (Admin), Maurice Kay LJ, giving the judgment of the Divisional Court, held that the test, where judicial review is not excluded by section 29(3), "must be on *Wednesbury* principles, but robustly applied, and with this court always keeping in mind that Parliament has understandably vested the decision in judges of the Crown Court who have every day experience and feel for bail applications".

25. Importantly, however, Maurice Kay LJ expressly rejected the suggestion that judicial review was appropriate "only in a rare case where a judge of the Crown Court has plainly gone wrong in an extreme way": see paragraph 12.

26. In *The Queen (on the application of Uddin) v Leeds Crown Court* [2013] EWHC 2752 (Admin), the deputy judge said this at paragraphs 31 to 34:

> 31. Section 29(3) is in clear and unambiguous terms. The relevant words are "the High Court has no jurisdiction over a Crown Court" in matters relating to trial on indictment. It is noteworthy that Parliament did not employ the words "relating to the indictment", but has deliberately adopted the much broader

phrase embracing "matters *relating to the trial* on indictment" (emphasis mine). That is a broad definition and it is plainly designed to prohibit this court trespassing upon the trial process itself. Collateral issues that have nothing to do with the trial are not covered by the prohibition.

32. The one theme that stems from Lord Browne-Wilkinson's speech in the Manchester Crown Court case and Maurice Kay LJ in the Isleworth Crown Court case is the trial process, (the trial itself) is forbidden territory.

33. Decisions made within the trial itself are plainly matters relating to trial on indictment. Decisions made in advance of the trial relating to bail and decisions made after the trial (before a retrial or before sentence) are amenable to judicial review challenge. I have to say I have certain misgivings about post trial/pre-sentence bail decisions as a trial is an indivisible process; but that issue is not for debate in this case. Accordingly, I will say no more on that.

34. Of course, pre-trial rulings on the admissibility of evidence and such like are intrinsic to the trial and may not be challenged in judicial review proceedings. The purpose of bail is to secure the attendance of a defendant at his or her trial. Prior to the trial that is collateral to the trial process. However, once the trial has started, bail, and indeed other decisions (see TH) are "matters relating to trial on indictment"(emphasis added). Once the trial has started there is no demand for the issue to be intrinsic to the indictment, it simply has to be a decision or matter relating to the trial. Bail is plainly a matter that relates to the trial process once the trial has started. For my part, I am convinced this interpretation is compliant with European Convention jurisprudence, striking as it does a proportionate

response by way of achieving the right balance between judicial decision and the need to focus on the trial, set against no High Court review.

27. I respectfully agree with the substance of what the deputy judge said in these paragraphs. In broad terms, once the trial on indictment has started, then section 29(3) bites. But in the present case, the trial which had been started was aborted. There is, therefore, no current trial. A trial is fixed for the summer of 2025. It could have started in March 2025, but for the unavailability of defence counsel, but that point is immaterial. The claimants are in the position of seeking bail before a jury has been sworn in respect of next year's trial. I can see nothing in the authorities that compels me to find that, in such a scenario, the jurisdiction of this court is ousted by statute. It is not. References to "an early stage in the proceedings", which are to be found in some of the cases, are beside the point. The question left begging is: which proceedings? The answer is the trial on indictment of the claimants that will begin in 2025.

28. I have already referred to what Maurice Kay LJ said in the *Isleworth* case about the nature of a judicial review of a crown court bail application. Mention must also be made of *The Queen (on the application of Iqbal) v Canterbury Crown Court* [2020] EWHC 452 (Admin), in which the judgment of the Divisional Court was given by Carr J, as she then was. In that case, the claimant was arrested after being charged with drug importation and applied for bail to the crown court. At paragraph 10, Carr J described what happened next:

> "A detailed hearing took place, with counsel for both sides appearing before the Judge. At the conclusion of the hearing, the Judge gave a ruling in which she refused bail, a transcript of which is available. The Judge set out the nature of the charge facing the Claimant and a summary of the prosecution evidence updated, as it had been, for the Judge and as presented to her. She stated that the case against the Claimant was "extremely strong" and "extremely serious". His account was "implausible". Were the Claimant to be convicted, he would receive a very substantial sentence. She stated in terms that she took into account the fact that the Claimant was of good character with family in Liverpool, and went on:

'… [The Claimant] is a man who... quite inexplicably in many ways, has been released under investigation for many months before he was re-interviewed, where he gave no comment and was subsequently charged. It's right to say that he has attended... the voluntary interview and... he appears at the magistrate's court But I am quite satisfied, as was the District Judge, that there was a very real and substantial risk of this man failing to surrender if I were to grant him bail, and that risk is not met by any of the proposed conditions, even if I add to it not applying for any travel documentation. So this application for bail is refused'."

29. The claimant in *Iqbal* put his case in the way recorded by Carr J at paragraphs 20 to 24:

"20. The Judge, it is then submitted:

i. failed to acknowledge the right to bail;

ii. failed to explain why she rejected the evidence that – notwithstanding the Claimant's knowledge of the seriousness and strength of the case against him – he had attended on the police and at court when requested, in favour of the findings that there was a very real and substantial risk of the Claimant failing to surrender if granted bail;

iii. appeared to question the police decision to release the Claimant under investigation in 2017 and thereafter.

21. It is the second of these complaints that lies at the heart of the Claimant's case. What is said is that the Judge weighed his attendance and compliance in the balance, but simply dismissed it without giving any proper reasons for doing so.

22. Reference is made to *R (on the application of Rojas) v Snaresbrook Crown Court* [2011] EWHC 3569 (Admin) ('*Rojas*') (at [21]), where the statutory duty to give reasons for removing bail which had previously been granted was emphasised Whilst it is accepted that this is not a case where bail was being removed, it is suggested that the same principles apply, by analogy, to a situation where someone has previously been released under investigation.

23. In *R (on the application of Fergus) v Southampton Crown Court* [2008] EWHC 3273 ('*Fergus*') Silber J (at [20] and [21) referred to the critical test that for custody to be imposed, custody had to be necessary. He confirmed that any reason justifying the decision to withdraw bail had to be stated by the decision maker, and that such reason must relate to the facts:

'…The underlying facts have to be put forward.'

24. The Claimant submits further that the duty to give reasons when withdrawing bail, and by analogy here, encompasses a duty to explain why a change from previous status is necessary. The integrity of the system, it is said, is compromised if judges overturn previous decisions without good reason. Anecdotally, Ms Lumsdon informed the Court that defence solicitors advise their clients as a matter of course that, absent a material change of circumstances and provided that the client has complied with attendance requirements on the police and the courts the courts will effectively honour the previous police decision".

30. Beginning at paragraph 29, Carr J considered the relationship between ECHR Article 5 and the Bail Act. Paragraphs 29 to 33 and paragraph 36 read as follows:

"29. Article 5 of the European Convention on Human Rights provides, materially, as follows:

> 'Right to liberty and security: 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:... (c) the lawful arrest or detention of a person affected... when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so...'

30. In my judgment, Article 5 does not add anything to the consideration of this particular question. Very shortly after *Allwin*, in April 2005, Collins J restated the position expressly in the context of Article 5 in *R (on the application of Wiggins)v Harrow v* Crown Court [2005] EWHC 882 (Admin) ('*Wiggins'*). At [35] to [37] he rejected the proposition that there should be a more intensive review in bail cases engaging fundamental rights:

> '35... The Crown Court judge constitutes, for the purposes of Article 5... the independent court which has to decide the issue. The Convention does not require any right of appeal from that independent court. This is not a strict appeal. It is a judicial review, so there is, in my judgment, no reason why the approach of this court should be other than a strict review approach....

> 37. [A more intensive review] would undoubtedly be the right approach if this were a decision of a review court dealing with an administrative decision against which there was no appeal. However we are not dealing with an administrative decision, but we are dealing with the decision of a judge.'

31.The approach in *Wiggins* was expressly adopted in *R (on the application of N) v Leeds Crown Court* [2005] EWHC 3352 (Admin) in December of the same year, where there is a useful summary of the relevant principles to be found, in particular at [13] to [17].

32. In October 2005, in *R (on the application of Thompson) v Central Criminal Court* [2005] EWHC 2345 (Admin), Collins J dealt with *Wednesbury* reasonableness and proportionality in the context of Article 5:

> '3. Mr Bowen has submitted that since we are concerned here with rights under Article 5 of the European Convention on Human Rights, the test ought to be one of proportionality rather than the usual *Wednesbury* test. But, as seems to me, in this context what this court has to decide, this being a review and not an independent appeal, is whether the decision made by the judge below proportionate. It will be proportionate if it lay within the bounds of what was reasonable in deciding what was proportionate. Hence, the test is, appropriately, the *Wednesbury* test when it comes to this court'.

33. As to the overall approach, Collins J described it thus:

> '10. The approach under the Bail Act is entirely consistent with the approach that the European Court has regarded as proper under Article 5, namely that there must be a grant of bail unless there are good reasons to refuse. The approach, therefore, really is not should bail be granted, but should custody be imposed, that is: is it necessary for the defendant to be in custody? That is the approach the court should take. Only if persuaded that it is necessary, should a remand in custody take place. It will be necessary if the court decides that whatever conditions can reasonably be imposed in relation to bail, there are nonetheless substantial grounds for believing that the defendant would either fail to surrender to custody, commit an offence, interfere with witnesses or otherwise obstruct justice.'

The test of necessity was repeated by Silber J in *Fergus* at [20]".

...

> 36. All that aside, in practice, it seems to me that there is unlikely to be any material distinction in outcome, whichever approach is adopted. In Gibson, the Court will only interfere if the judge wrongly exercised his discretion; and in Thompson, the Court will only interfere if the decision was not within the bounds of what is reasonable. What is required is the robust application of Wednesbury principles. Insofar as there is any material difference in cases relating to the granting or the withholding of bail, the well-established line of reasoning in the later authorities – commencing with the Divisional Court decision in M in 2005 – is to be preferred."

31. Carr J then addressed the alleged inadequacy of reasons at paragraphs 38 to 40:

> "38. The essence of the claim is that the Judge failed to give adequate reasons for finding that there were substantial grounds for believing that the Claimant would fail surrender to custody in circumstances where the Claimant had at all times previously cooperated and attended court at all times as required, including after charge. For the Claimant, it is said that the Judge ought to have, but failed, to explain why there should be a change in his custody status; alternatively, that the Judge should not simply have disregarded his previous cooperation in such circumstances without explanation.
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> 39. I am not persuaded that the Judge's decision was irrational in any way, or that she failed to give adequate reasons for the purpose of s.5(3) of the Bail Act 1978. The decision itself was well within the bounds of reasonableness and cannot be said to have involved the wrong exercise of discretion. As for reasons, the Judge's analysis was tailor-made, clear, and reasoned – far from the situation in *Rojas* for example, where the Judge had simply stated that a custodial sentence was inevitable and the defendant would be remanded in custody.
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> 40. This is not a case where the Judge had to proceed on the basis that she was considering whether or not a change of custody status was justified – rather her task was to consider, by reference to the relevant legislative framework, whether or not it was necessary to impose custody at that stage. It is difficult to see what more she could have said. She stated, in terms, that she had well-in-mind the fact that the Claimant had complied, including after charge, with requirements to attend. She expressly did not disregard that factor".

32. Both in writing and in his oral submissions, Mr Forde was at pains to point to a number of principles articulated in Strasbourg jurisprudence regarding Article 5. In *Creanga v Romania* (2013) 56 EHRR 11 the court stressed the deprivation of liberty could be arbitrary and, therefore, prohibited by Article 5, even if it occurred by operation of national law. In *Boicenco v Moldova* (App no 41088/05) ECHR 11 July 2006 and *Khudoroyov v. Russia* (App no 5829/04) ECHR 31 May 2006, the arguments for and against release were said by the court not to be general and abstract but had to be formulated on the applicant's personal circumstances. In *Scott v Spain* (1997) 24 EHRR 391, the court said the complexity and special characteristics of the investigation were to be considered in ascertaining whether the authorities are displayed, in the court's words, "special diligence".

33. In common with Ms Schutzer-Weissmann, who appears for the interested party, I read parts at least of the claimant's statement of facts and grounds as containing the proposition that the ending of CTL protection, which occurred when the subsequently aborted trial began in this case, meant that the crown court's duty under the Bail Act was altered so as to require the court to approach bail exactly as it would have done if CTL protection was still in place. Indeed, that proposition seems to me to be explicit in paragraph 53 of the statement of facts and grounds.

34. In his oral submissions, however, Mr Forde appeared to resile from that stance. In my view, he was correct to do so. The Bail Act remains the sole mechanism by which applications for bail must be assessed. There is nothing in the Strasbourg jurisprudence that requires the Act to be "read down" in the way originally proposed. The principles articulated in the Strasbourg cases cited by Mr Forde are all capable of being given effect through the proper application of the Bail Act, including the need to have regard to relevant considerations; to eschew irrelevant considerations; and to give adequate reasons, bearing in mind that adequacy is a protean term which varies according to the particular circumstances of the case in question.

35. I agree with the interested party that the judge's decision falls to be assessed according to these public law principles. I should say here that I consider the grounds of claim are drafted so as to encompass a “reasons” challenge.

36. The November bail applications were made because there had been a change in circumstances. That change was the aborting of the trial and the consequent loss of CTL protection, with a new trial being scheduled to start in some eight months' time. There was also the fact that the complainant had given her evidence and had been cross-examined by defence counsel. That evidence was, in Mr Forde's words, now "locked in".

37. The claimants had been refused bail by different judges on different dates earlier in 2024. Ms Schutzer-Weissman submitted that the evidence of the complainant's boyfriend had still to be taken and that the issue of interference with witnesses was, therefore, still live, for this if no other reason She also submitted that it was necessary to obtain a transcript of the reasons why the judge had acceded to the defence application to abort the trial.

38. I acknowledge her first point, but it does not mean that the other matters I mentioned were not relevant considerations with which the judge had to engage. As for the second point, no issue has been taken by the interested party prior to the start of this hearing with the synopsis of the decision to abort the trial, found in paragraph 2 of the statement of facts and grounds, which was compiled from defence counsel's note. In any event, I do not consider that it matters for present purposes exactly why the defence application succeeded. The important point is that it did, with the consequences I have described.

39. I do not accept that the fact the judge said he had considered the written and oral submissions of the claimants shows that he had had regard to the very matters that were said to constitute the change in circumstances. In my view, he did not. They were material considerations. The judge therefore needed to have regard to them. What weight he might place on them would have been a matter for him.

40. In any event, even if I am wrong about this, I have firmly concluded that there is an absence of adequate reasons in this case. The fact that the judge was well-versed in what had led to the applications being made at this time in no way meant that he was absolved from the ordinary public law requirement of explaining why the claimants had been unsuccessful. The conclusion that there were reasonable grounds for believing that the claimants would fail to surrender, interfere with witnesses and commit further

offences were just that; they were conclusions, devoid of any proper explanation as to how they had been reached.

41. Furthermore, the claimants had put different cases for bail by reference to their particular personal circumstances, but the extremely short ruling did not address these at all.

42. In short, the reader is left in doubt of what the judge made of the claimant's submissions.

43. Returning to paragraph 39 of *Iqbal*, I agree with Mr Forde that the present case is not comparable with the impugned decision in that case. The present case is much closer to the legally deficient decision in *Rojas*.

44. I have taken account of Ms Schutzer-Weissmann's submission that it would be possible to go back to the judge who made the decision on this case and seek further reasons from him. Mr Forde tells me, in his experience of some three decades at the criminal bar, he has never known that to occur in the context of a bail application. Whilst it may theoretically be possible, I well bear in mind the problems that this court and higher courts can have with *ex post facto* reasoning, I therefore do not consider that this theoretical possibility provides an appropriate solution.

45. The claimants succeed on public law grounds, having given due allowance to the expertise of the judge in this case. My decision involves no dilution of the Bail Act process: it stands supreme.

46. In the circumstances, it is unnecessary for me to make a finding on the challenge brought by reference to an alleged delay in arranging for the bail applications to be heard. In any event, Mr Forde did not pursue that with any vigour in his submissions.

47. I grant permission to bring judicial review. I grant the judicial review. I shall order that the decision of 18 November 2024 in respect of each of the claimants is quashed. This means that their applications for bail remain outstanding before Croydon Crown Court. The matter is, therefore, remitted to that court. I emphasise this means that the

claimants remain on remand for the time being. I shall invite counsel to agree, if possible, an order the gives effect to this judgment.

48. **Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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