Neutral Citation: [2024] EWHC 612 (Admin)

Case No: CO/307/2023; AC-2023-LON-514

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/03/2024

Before :

THE HONOURABLE MR JUSTICE SAINI

- -

Between :

SANJAY BHANDARI **Applicant**

- and -

(1) GOVERNMENT OF INDIA
(2) SECRETARY OF STATE FOR THE HOME DEPARTMENT **Respondents**

- -
- -

Edward Fitzgerald KC and **James Stansfeld** (instructed by **Janes Solicitors**) for the **Applicant**
Ben Lloyd and **Alex Du Sautoy** (instructed by **Crown Prosecution Service**) for the **First Respondent**
Rebecca Hill (instructed by **Government Legal Department**) for the **Second Respondent**

Hearing date: 14 March 2024

- -

Approved Judgment

This judgment was handed down remotely at 10am on Tuesday 19 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MR JUSTICE SAINI

Mr Justice Saini :

I. Overview

1. As described in more detail below, this judgment contains my reasons for refusing the application of Mr Bhandari ("the Applicant") for permission to appeal against the decision of the Second Respondent, the Secretary of State for the Home Department ("the SSHD") to order his extradition. The extradition of the Applicant is sought by the Government of India ("the Government"). The Applicant is an Indian businessman with substantial interests in the defence industry. India has been designated a Category 2 Territory, and Part 2 of the Extradition Act 2003 ("the Act") applies to these proceedings. Following a lengthy extradition hearing, DJ Snow ("the judge") sent the Applicant's case to the SSHD who then ordered the Applicant's extradition pursuant to s93 of the Act.

2. The Applicant made applications for permission to appeal against the decisions of the judge and the SSHD which were considered "on the papers" by Jay J on 24 October 2023. Jay J granted permission to appeal on Grounds 3, 5 and 7 (essentially ECHR points) as set out in the Applicant's Perfected Grounds but refused permission in relation to Grounds 1, 2, 6 and Ground 8 (specialty). On 14 March 2024, I heard a renewed application for permission to appeal in respect of these rejected Grounds. For reasons I gave in a short judgment following conclusion of oral argument, I granted the applicant permission to appeal on Grounds 1, 2 and 6 of his Perfected Grounds which are challenges to the judge's decision. I set out in that judgment why I considered these Grounds to be "reasonably arguable" within Crim PR 50.17(4)(b). I however refused the application in relation to Ground 8 which concerns a challenge on specialty grounds to the decision of the SSHD to make an extradition order. These are my reasons.

II. Procedural history

3. The Applicant's extradition is sought pursuant to two requests ("the Requests") which seek his return for trial as follows. The first request, dated 15 April 2020, relates to an offence of money laundering. It was certified on 16 June 2020 and the Applicant was arrested on 15 July 2020. The second request, dated 2 June 2021, relates to offences under The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015 (broadly concerning tax matters). It was certified on 18 June 2021 and the Applicant was arrested on 8 July 2021. Before the judge the Applicant opposed extradition on a number of grounds which included issues of dual criminality, whether a prima facie case was established by the Requests, and a number of ECHR related challenges to extradition. These grounds of opposition failed and the case was sent by the judge to the SSHD.

4. Following the judge's adverse decision, the Applicant's legal representatives sent detailed written submissions to the SSHD dated 9 December 2022. They submitted that the Applicant should be discharged on two bases which essentially represent the substance of the oral and written arguments made by Mr Fitzgerald KC for the Applicant before me at the renewal hearing. First, it was argued that there are no adequate "specialty" arrangements with India and therefore the requirements of s.95 of the Act are not met. Secondly, and subject to the first challenge, it was said given the expressed intention of the Government to prosecute the Applicant for additional offending outside the Requests, the SSHD could not order extradition in the absence of

explicit assurances that he will not be prosecuted without consent being requested. The written submissions included reference to domestic case law concerning extradition to India.

5. On 12 January 2023, the SSHD ordered the Applicant's extradition. In the covering letter dated 13 January 2023 the SSHD provided reasons as follows:

> "The Secretary of State, cognisant of the existing jurisprudence on this matter, finds that there are adequate speciality arrangements between the UK and India, and notes that Mr Bhandari has failed to adduce evidence substantiating his claim of ineffective speciality arrangements or that such arrangements have previously been breached. Accordingly, the Secretary of State respectfully declines Mr Bhandari's invitation to seek further assurances from the Government of India in this respect and finds that adequate speciality arrangements exist between the UK and India."

6. One of Mr Fitzgerald KC's complaints before me was that these brief reasons were inadequate by reference to the principles in English v Emery Reimbold & Strick Ltd [2002] 1 WLR 2409. He underlined that the detail of the argument in his client's written submissions had not been properly answered.

7. In addition to the complaint about the reasoning, the Applicant seeks permission to appeal the decision of the SSHD to order extradition on the following ground: 'The SSHD erred in concluding that she should not order Mr Bhandari's discharge on the grounds of specialty under s.93(3) of the Act'. In refusing permission on this ground Jay J said: '*The Appellant's case is a re-run of arguments on specialty, in the context of India, which have failed on several occasions in the past.'*

III. Specialty: the 2003 Act and the Treaty

8. The proposed appeal against the SSHD's decision concerns "specialty". The principle of specialty is a rule of extradition law which requires that a person extradited to a requesting state is not to be detained, prosecuted or punished by the requesting state for any offence committed prior to the extradition, apart from that for which extradition was granted. For present purposes it is reflected in domestic law by section 95 of the 2003 Act.

9. Section 95 of the 2003 Act provides, in so far as is relevant:

> "(1) The Secretary of State must not order a person's extradition to a category 2 territory if there are no speciality arrangements with the category 2 territory.
>
> (2) But subsection (1) does not apply if the person consented to his extradition under section 127 before his case was sent to the Secretary of State.
>
> (3) There are speciality arrangements with a category 2 territory if (and only if) under the law of that territory or arrangements

> made between it and the United Kingdom a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition only if—
>
> (a) the offence is one falling within subsection (4), or
>
> (b) he is first given an opportunity to leave the territory.
>
> (4) The offences are—
>
> (a) the offence in respect of which the person is extradited;
>
> (b) an extradition offence disclosed by the same facts as that offence, other than one in respect of which a sentence of death could be imposed;
>
> (c) an extradition offence in respect of which the Secretary of State consents to the person being dealt with;
>
> (d) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.
>
> …".

10. Article 13(1) of the Extradition Treaty ("the Treaty") between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India, signed on 22 September 1992, provides:

> "Any person who is returned to the territory of the Requesting State under this Treaty shall not, during the period described in paragraph (2) of this Article, be dealt with in the territory of the Requesting State for or in respect of any offence committed before he was returned to that territory other than:
>
> (a) the offence in respect of which he was returned;
>
> (b) any lesser offence disclosed by the facts proved for the purposes of securing his return other than an offence in relation to which an order for his return could not lawfully be made; or
>
> (c) any other offence in respect of which the Requested Party may consent to his being dealt with other than an offence in relation to which an order for his return could not lawfully be made or would not in fact be made."

IV. The complaints and the case law

11. I have set out above the SSHD's brief reasons for ordering the Applicant's extradition and rejecting the arguments in opposition. Mr Fitzgerald KC argued that under s.93 of the 2003 Act the SSHD was required to consider whether, for the reasons identified in

s.93(2), he was prohibited from ordering the Applicant's extradition. He says that this was not lawfully done. There were essentially two connected points made, which I will seek to simplify. First, as a result of repeated references in the texts of the Requests to other allegations (and potential prosecutions) which may be brought against the Applicant (not just for the offences in the Requests), he may be prosecuted in breach of specialty. Second, given the terms of the Treaty, the Indian Courts may proceed against him in respect of such matters as "lesser offences" without determining that they are "extradition offences" within the meaning of s.137 of the 2003 Act.

12. Relying on these two points, it is argued for the Applicant that without an assurance there will not be effective specialty protection. It is also argued that this point has not been determined in earlier cases. I was not persuaded by these submissions and do not consider there was any arguable error in the SSHD's decision. I accept the well-structured and concise oral and written submissions of Ms Hill for the SSHD.

13. The first point is addressed by the findings of the Divisional Court in earlier cases and no cogent evidence is before me to suggest that these findings are no longer representative of the position.

14. The adequacy of specialty arrangements with India have been the subject of multiple challenges. So, in Patel v India [2013] EWHC 819 (Admin) it was held at [71] that in light of the Treaty arrangements, the SSHD needed only to consider whether there was any compelling evidence that the Government would act contrary to its Treaty obligations. The Court concluded at [83]–[85] that there was no such evidence. A like conclusion was reached in Shankaran v India [2014] EWHC 957 (Admin), and acknowledged in Chawla v India [2018] EWHC 3096 (Admin). The adequacy of specialty arrangements was again considered by the Divisional Court in R (on the application of Vijay Mallya) v Government of India and the Secretary of State [2019] EWHC 1849 (Admin) in which the Court refused an application for permission to appeal against the SSHD's finding that there are effective specialty arrangements with India. The grounds of challenge in Mallya are summarised at [30] and [32]–[33] of the judgment. In some respects the specialty challenge mirrors that advanced in the written submissions for Mr Bhandari in this case. In Mallya an argument was made that there was a real risk of breach of specialty on the basis of the 40 criminal cases extant against him in India. The Court concluded at [31] that:

> "We think it clear that the position on return would simply be that there are outstanding warrants for the applicant's arrest in other cases. It would only be if and when attempts were made to execute those warrants, and if an order was made to remand him in custody with a view to trial in other cases, that there might be a breach of the speciality requirements. No evidence has been adduced which seems to us capable of supporting an inference that there is a real likelihood that such steps will be taken, given that they would on the face of it involve a breach of Indian law and of India's international obligations."

15. This applies with equal force to the case before me. I note that Mr Mallya also contended that specialty arrangements with the Government are not effective given the Portuguese Supreme Court's finding that, following the extradition of a person called Abu Salem Ansari, there was a breach of specialty (the Ansari case is also relied

upon in Mr Bhandari's submissions in the case before me). In Mallya it was argued that there had been developments in Ansari's case not yet considered by the Courts in the UK. In particular, in September 2017, he was convicted in a further set of proceedings in India and was sentenced to life imprisonment in breach of an assurance. This was rejected:

> "Whatever the rights and wrongs of the particular case of Mr Ansari, we do not consider that they provide any reasonably arguable basis for challenging the efficacy of the speciality arrangements between India and the United Kingdom which are applicable in this case. The applicant has not been able to point to any previous case in which there has been any alleged breach by the Indian authorities of its extradition treaty with this country and we see no grounds for believing that such a breach can reasonably be anticipated in the present case."

16. In Modi v Government of India [2021] EWHC 2257 (Admin) the Court reviewed further evidence post-dating the decision in Mallya, said to demonstrate that specialty arrangements are not effective. Chamberlain J concluded:

> "74. Of the material which post-dates *Mallya*, the only case which involved extradition was Christian Michel and that had been considered by the judge in this case at [120] of his judgment. In any event, criticism of the conditions in which Mr Michel has been held in India has no bearing on the specific question whether the GoI will honour its Treaty obligation to accord specialty protection to the appellant".

17. Having set out the case law, I turn to briefly summarising my reasons for refusing permission. There are five points.

18. First, as to the "reasons" challenge before me, in my judgment the SSHD gave adequate reasons for ordering extradition. This issue is context specific. I was not persuaded that there is evidence by which to distinguish Mr Bhandari's position from the Appellants' in the above cases. The reasons were short but sufficient.

19. Secondly, there are in my judgment effective specialty arrangements in place between the UK and India in the form of Article 13(1) of the Treaty. The High Court has repeatedly concluded that those specialty arrangements are adequate and in so doing, has upheld the SSHD's reliance upon the Treaty, most recently in the 2021 decision of Modi.

20. Thirdly, India has longstanding extradition arrangements with the UK. As recognised in Patel, it is to be presumed that the Indian authorities will act in good faith and comply with their obligations under the Treaty unless there is compelling evidence to the contrary.

21. Fourthly, the Applicant's attempt to establish distance between the terms of s.95(4) of the 2003 Act and Article 13(1)(1) of the Treaty is rightly characterised by Ms Hill as being artificial and inconsistent with the case law. I will begin by summarising the argument. It was argued that in Patel and later decisions applying its dicta the courts failed to identify and address a material distinction between s.95 of the 2003 Act and

the provisions of the Treaty: save for where the requested person waives his speciality rights, s.95 of the 2003 Act restricts in ss.95(4)(a)-(c) the offences for which the requested person can be dealt with to "extradition offences", which are defined in ss.137 and 138 of the 2003 Act. It is argued that, in contrast pursuant to Article 13(1) of the Treaty, the offences for which a requested person can be dealt with following extradition are not limited to "extradition offences". Reference is made to Article 13(1)(b) which permits the Indian authorities to proceed against a requested person for a "*lesser offence disclosed by the facts proved for the purposes of securing his return other than an offence in relation to which an order for his return could not lawfully be made*".

22. I begin with Patel. Kenneth Parker J explained:

> "74. It is notable that Article 13(1)(c) of the Treaty is practically a mirror image of section 95(4)(b) of the EA 2003, in that the subject of extradition may be dealt with for an extradition offence disclosed by the same facts, save that under Article 13(1)(c) such an offence must be a "lesser offence". That qualification in fact is a mirror image of the applicable domestic provision regarding specialty in India, namely, section 21(1)(b) of the Extradition Act 1962 which refers to:
>
> > "any lesser offence disclosed by the facts proved for the purpose of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not lawfully be made."
>
> 75. There is, therefore, near perfect symmetry between the domestic law of specialty in the UK and India, reflected in the Treaty between the two States and buttressed in this case by a specific undertaking by the Government of Gujarat that the Appellant will be dealt with in accordance with the Treaty".

23. Ms Hill is right to submit that the language in Article 13(1)(1) "*an offence in relation to which an order for his return could…lawfully be made*" necessarily encompasses an 'extradition offence'. It is not to be read in isolation but rather in the context of the Treaty as a whole which establishes when an order for return can '*lawfully be made'*. Pursuant to Article 1 of the Treaty, an order can only lawfully be made where it relates to an extradition offence. Article 2 of the Treaty defines 'Extradition Offences' (so far as it is relevant) as follows: '(i) An extradition offence for the purposes of this Treaty is constituted by conduct which under the laws of each Contracting State is punishable by a term of imprisonment for a period of at least one year.'

24. The key elements of Article 2 of the Treaty therefore reflect the principal requirements of ss.137 and 138 of the 2003 Act as follows: (a) the *conduct* must be punishable under the laws of the UK (dual criminality); and (b) the *conduct* must be punishable with at least 12 months' imprisonment in the UK and in India.

25. Fifthly, the Applicant has failed to advance adequate evidence to demonstrate that specialty arrangements between the UK and India are not effective in practice, such that the Court should re-visit its earlier conclusions. I have considered in this regard the

Affidavits filed in Mr Bhandari's case by representatives of the Directorate of Enforcement. In each case the author has sought to describe their understanding of the dual criminality test. For the Applicant it was argued that this evidence demonstrates a practice in India which does not reflect the requirements of s.95 of the Act. This is not arguable. The precise qualification and status of these officers is not known but they are not purporting to give evidence of the practice of the Indian Courts.

26. In my judgment, the Applicant failed to produce evidence demonstrating that the practice of the Indian Courts is inconsistent with the specialty protections afforded by the Treaty. He has been unable to advance any evidence of habeas corpus applications, criminal appeals or any other case law which support his assertions. Furthermore, the Applicant has failed to demonstrate any evidence that specialty has indeed been breached following extradition from the UK to India. No such case or example was cited to me.

27. Finally, the fact of multiple other investigations ongoing in India adds nothing to the Applicant's case, for the reasons identified by the Divisional Court in Mallya at [31]. That some of these allegations are mentioned on the face of the request does not mean that an Indian Court, acting consistently with India's Treaty obligations towards the UK, will consider those offences '*lesser offence(s) disclosed by the facts proved for the purpose of securing his surrender*'.

28. For these reasons, I refuse permission to appeal on Ground 8.