[2020] IEHC 70

THE HIGH COURT
JUDICIAL REVIEW

[2019 No. 955 J.R.]

BETWEEN

F.R. AKA J.S. (PAKISTAN)

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

(NO. 2)

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 4th day of February, 2020

1. This judicial review was listed for a full hearing on 3rd February, 2020, but when the matter was ultimately called on for hearing at 4.30 pm that day, the court sitting late to facilitate the parties, the applicant asked for an adjournment to seek an amendment and an associated extension of time. That application was not signalled to the respondent at any earlier stage. I (probably erroneously) granted that adjournment, so I dealt only with an injunction application. That was heard and refused in *F.R. aka J.S. (Pakistan) v. Minister for Justice and Equality (No. 1)* [2020] IEHC 69 (Unreported, High Court, 3rd February, 2020).

2. The substantive application (as amended) is now listed for hearing on 11th February, 2020. After court on 3rd February, the applicant was taken into custody by members of the GNIB at around 6.15 pm. According to her solicitor, she collapsed on being told that she would be detained, and said she did not have her medication. She was told she would receive medical attention in prison and is currently in the Dóchas Centre. While of course her collapsing and being in need of medical attention is unfortunate, it has to be recalled that the applicant is a person who did not comply with her legal obligation to voluntarily leave the State in accordance with a deportation order. That in effect gives the State authorities very little choice but to require her compulsory removal as well as the necessary arrest and detention that for all practical purposes is required to make such removal effective.

3. On 4th February, 2020 at 11.00 am the applicant made yet another interlocutory application, this time to Barrett J. An application for bail was made on notice to the respondent and was adjourned to 12.45 pm, at which point it was transferred to me to take up at 2.30 pm. The applicant now seeks bail under s. 5 (7) of the Immigration Act, 1999, as substituted (the notice of motion incorrectly says “as amended”) by s. 78 of the International Protection Act, 2015. The applicant’s new notice of motion also seeks an injunction pending the determination of the proceedings which was the very relief she was refused yesterday. The applicant is due to be deported at 2.00 pm on 5th February, 2020.

4. In connection with the bail application I have now received helpful submissions from Mr. Eamonn Dornan B.L. for the applicant and from Ms. Sarah Cooney B.L. for the respondent.

Bail in the context of a person arrested for deportation is only appropriate if an injunction is or would be appropriate.

5. The fundamental question is, why should an applicant get bail pending her imminent deportation if she has been refused an injunction? Mr. Dornan's answer to that was hard to pin down precisely but can probably be summarised, without doing too much violence to it, as follows:

   (i). the two processes are "*very different*";

   (ii). "*the Oireachtas has built in specific protections*" for persons in this situation;

   (iii). "*the purpose of s. 5 (7) is to enable an applicant to remain in the State*" pending his or her hearing date (that is, needless to say, incorrect – the purpose of s. 5(7) is to enable an applicant to *apply* to remain in the State pending the determination of his or her proceedings); and

   (iv). the applicant has "*a statutory right to bring an application for bail*".

6. Mr. Dornan's submission is based on a fundamental misunderstanding. Just because a jurisdiction exists does not mean it is appropriate to exercise it. Mr. Dornan placed great emphasis on the *existence* of the jurisdiction to grant bail here, but had very little tangible to say on why it would be appropriate to *exercise* that jurisdiction. It would not. The applicant's solicitor avers at para. 20 as follows: "*I say that the applicant meets the conditions for an application under s. 5 (7) of the 1999 Act (as amended)*" but it is clear that all he means by that is that the jurisdiction exists in such a case. That is a necessary but not a sufficient condition. It makes no sense whatsoever to say that an applicant who does not meet the test for an interlocutory injunction should nonetheless be released on bail pending the determination of his or her challenge to adverse immigration decisions. In short, it is in general, and certainly here, inappropriate, to release on bail a person who is detained for the purposes of imminent deportation if they would not meet the test for an interlocutory injunction. That is doubly so if an interlocutory injunction has actually been refused. To grant bail under those circumstances is to grant an injunction by other means.

7. It is also relevant to note that the applicant herself upended the timetable set out by the court for a substantive hearing on 3rd February, 2020, requested that the hearing be adjourned, and asked that the court would deal only with the injunction. If the substantive hearing had gone ahead, either the applicant would have won and the question of bail would not have arisen, or the applicant would have lost and the question of an "interlocutory" order would not have arisen.

8. There is a slight air of the tactical about how this matter has been approached by the applicant. It also shows what the court is up against in managing the hydra-headed process of asylum and immigration litigation. The court was asked for and (in a moment of weakness) gave an adjournment of the substantive hearing, but all that seems to have done is to have spawned not one but two interlocutory hearings, both of considerable complication on a par not too far short of a substantive hearing. Indeed, I still have to

face the substantive hearing hanging over me on the horizon; so, if anything, this case demonstrates the merits of trying to keep everything together in a single hearing. If nothing else, that avoids duplication of energies and minimises costs, as well as hopefully achieving the best result overall.

9. John Stanley's *Immigration and Citizenship Law* (Dublin, Round Hall, 2017) at p. 619 does not deal with the particular point raised in this case and counsel did not find any case law specifically on this point either, but all that that demonstrates is the truth of an adage which I can offer in the following form: the most obvious propositions are the ones for which it is most difficult to find authority. Here the two takeaway points are:

   (i). the fact that a jurisdiction, whether inherent or statutory, exists in a particular case is not in itself a reason to exercise that jurisdiction; and

   (ii). the grant of bail to a person detained for the purpose of imminent deportation who does not meet the criteria for, or has actually been refused, an injunction, is generally inappropriate.

Order

10. The application for bail is refused.