

# THE HIGH COURT

[2022] IEHC 635

[2022 No. 75 EXT]

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**KEISHA HARTY**

**RESPONDENT**

## **JUDGMENT of Ms. Justice Caroline Biggs delivered on the 26<sup>th</sup> day of July, 2022**

1. By this application, the applicant seeks an order for the surrender of the respondent to the United Kingdom of Britain and Northern Ireland pursuant to a Trade and Cooperation Agreement Warrant dated 19<sup>th</sup> of January 2022 (“the TCA warrant”). The TCA warrant was issued by District Judge James Clarke sitting at Liverpool Magistrates Court, as the issuing judicial authority.
2. The TCA warrant seeks the surrender of the respondent in order to prosecute her in respect of alleged assault and breach of bail-type offences.
3. The TCA warrant was endorsed by the High Court on the 4<sup>th</sup> of April 2022, and the respondent was arrested and brought before the High Court on the 11<sup>th</sup> of April 2022 on foot of same.
4. I am satisfied that the person before the Court, the respondent, is the person in respect of whom the EAW was issued. No issue was raised in that regard.

5. I am satisfied that none of the matters referred to in ss. 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended (“the Act of 2003”), arise for consideration in this application and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.

6. Each of the offences in respect of which surrender of the respondent is sought carries a maximum penalty in excess of twelve months’ imprisonment, therefore minimum gravity has been established.

7. As surrender is sought to prosecute the respondent, no issue arises under Section 45 of the Act of 2003.

8. The respondent objected to surrender on the following grounds:

- In respect of the offence of wounding with intent to do grievous bodily harm, surrender is prohibited by Section 37 (1) (b) of the European Arrest Warrant Act, 2003, as amended, on the grounds that surrender would be in breach of the respondent’s right not to be deprived of her liberty, save in accordance with law as guaranteed by Article 40.4.1 of the Constitution. This is in circumstances where Part H of the warrant has not been completed and the respondent is subject to the possible imposition of a life sentence, but the issuing judicial authority has not provided assurances regarding the entitlement of the respondent to seek clemency, parole or some other form of suspension or non-execution of the sentence after a given period of time.
- In respect of the offences of wounding with intent to do grievous bodily harm and of unlawful wounding, surrender is prohibited by Section 11 (1a) (f) of the European Arrest Warrant Act, 2003, as amended on the grounds that insufficient details are set out regarding the circumstances in which the offence is alleged to have been committed, including the time and place of its

alleged commission and the alleged degree of involvement of the respondent in the commission of the offence. In particular, the address at which the offences are to have occurred is not set out. Furthermore, it is unclear whether the respondent is alleged to have been part of a common design to commit the offences and whether the unnamed female who is alleged to have punched the victim three times and grabbed her by the hair has been charged with offences arising out of the incident.

- In respect of the alleged offence contrary to Section 6(1) of the Bail Act, 1976, surrender is prohibited by Section 11 (1a) (f) of the European Arrest Warrant Act, 2003, as amended on the grounds that insufficient details are set out regarding the circumstances in which the offence is alleged to have been committed, included the time and place of its alleged commission and the alleged degree of involvement of the respondent in the commission of the offence. No such information is set out.
- In respect of the alleged offence contrary to Section 6 (1) of the Bail Act, 1976 surrender is prohibited by Section 38 (1) (a) of the European Arrest Warrant Act, 2003 in circumstances where no particulars are set out on the warrant from which the existence of a corresponding offence could be established.

9. In light of the aforementioned objections, this Court sought additional information and was furnished with same in a letter dated 6<sup>th</sup> May 2022. Therein, the issuing judicial authority indicated:

*“In respect of point one, although the sentencing guidelines indicate that the offence is punishable by a custodial life sentence, I can confirm that the person if found guilty of this offence will not be sentenced to a whole term life sentence and will be eligible*

*for parole within a period following detention and I would not expect her to serve more than 10 years imprisonment.*

*In respect of point two, the offence location where this incident occurred is Tudor Road, Birkenhead, Wirral, Merseyside, UK.*

*In respect of point three, I can confirm that this incident was not premeditated and appears to be a spontaneous incident which resulted out of a drunken argument, the other person named has been charged and dealt with by the courts and is not serving a custodial sentence for their part.*

*In respect of point four, I can confirm that whilst celebrating a New Year's Eve party, an argument started between Harty and the victim and as a result it is alleged that Harty used a wine glass to cause significant injuries to the victim's face. This incident occurred on 01.01.2020 and the suspect has since been identified from an ID parade and charged with the offence, Harty has failed to attend any court procedures."*

**10.** Additional information was also received from the Crown Prosecution Service dated 6<sup>th</sup> May 2022, in the following terms:

*"1. Where a life sentence (whether mandatory or discretionary) is imposed, the sentencing judge determines what part of the sentence must be served in prison before the offender may be considered for release on licence: That period is referred to as the minimum term.*

*Every person sentenced on indictment has the right to ask for a review of that minimum term by the Court of Appeal.*

*The offender has to serve the appropriate minimum term that reflects the punitive element of the sentence. Once this punitive term of imprisonment has expired the offender enters into the risk element of the sentence. He may only be detained if he continues to present a risk to the public.*

*An independent Parole Board conducts a review of the prisoner's sentence once the punitive element of the sentence has expired. A judge chairs this panel. An oral hearing can take place to determine whether the prisoner's detention should continue. The Parole Board must decide whether it is necessary for the protection of the public for the prisoner's detention to continue. At this hearing the prisoner has the right to be present, to be legally represented and to call and question witnesses. The Parole Board can direct the release of the prisoner. If it decides that the prisoner should not be released, then a further hearing will take place within 2 years to review the prisoner's detention and at regular intervals thereafter.*

*All life sentence prisoners are released under a licence that remains in force for the rest of their lives.*

*The life licence can be revoked, and the offender returned to prison at any time if necessary, on public protection grounds.*

*In every case, including cases where a whole life term or a minimum term exceeding twenty years has been imposed, the prisoner may apply for exceptional or compassionate release under section 30 of the Crime (Sentences) Act 1997 and/or for release under the powers of the Royal Prerogative of Mercy."*

*2. The offence occurred at 2A Tudor Road, Birkenhead, Wirral, Merseyside.*

*3. Keisha Harty is not alleged to have committed the offence as part of a joint enterprise with another. The unnamed female referred to in part (e) of the Warrant who is alleged to have punched the victim three times and grabbed her by the hair was charged with an offence of common assault upon the victim. This offence carries a maximum of 6 months imprisonment. This offence was listed for a separate trial in the Magistrates Court on 9th August 2021. The victim did not attend court to give evidence on this date and the prosecution offered no evidence."*

It is conceded by the respondent that as a consequence of this information, objections 1 and 2 are no longer being relied upon, and are therefore, dismissed.

**11. Is surrender prohibited by Section 21A of the Act of 2003?**

It is clear, that a decision has been made to charge the respondent. The respondent suggested that the additional information referred to above raises a question as to whether the decision to try the respondent for the offence, still subsists, as the victim has made it known to the authorities that she did not wish to give evidence in respect of the second accused. The respondent submits that it is possible that the trial of the respondent may not be viable. As a result of this submission, which was not raised in the grounds of objection, this Court asked the issuing judicial authority a number of questions in relation to the prosecution. The issuing judicial authority has confirmed definitively that the prosecution is still viable.

**12. Section 21A (2) of the 2003 Act states:**

*“Where a European arrest warrant is issued in respect of a person who has not been convicted of an offence specified therein, it shall be presumed that a decision has been made to charge the person with, and try him or her for that offence in the issuing state unless the contrary is proved.”* (Emphasis added)

**13. In the present case, at the beginning of the TCA warrant, the following is clearly stated:**

*“This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purpose of conducting a criminal prosecution or executing a custodial sentence or detention order.”*

**14. The assertion that the alleged victim may not give evidence at the respondent’s trial, does not rebut the statutory presumption in Section 21A of the 2003 Act. It also does not displace the clear terms of the first paragraph of the TCA warrant, which states that the respondent is sought for the purpose of conducting a criminal prosecution, or for the purposes**

of executing a custodial sentence or detention order. In any event, in light of the confirmation from the issuing judicial authority, the prosecution is viable, and the issue is beyond dispute.

This issue is without merit and is, therefore, dismissed.

**15. Is surrender prohibited by section 38 of the 2003 Act?**

Part E of the TCA Warrant states:

*“This warrant relates to in total: 3 offences*

*Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:*

*On New Year’s Eve 2019 at approximately 8 p.m. the witness Rudolf was at her home address in Birkenhead, Wirral, when the defendant Keisha Harty and another woman attended her address. They had brought alcohol with them and had clearly been drinking prior to attending the address.*

*Just before midnight a man attended the address bringing the victim Nicola Hilton with him.*

*The victim stated she was homeless, and she was invited into the house for a drink.*

*Rudolf described the victim as "a nice girl" and getting on well with everyone.*

*At approximately 03:10 a.m. on 01/01/2020 and after a considerable amount of alcohol had been consumed, Rudolf states that she was sat at her dining table and the defendant was sat at the table next to her. The other woman present was sat on the opposite side of the table.*

*The man present was standing to her right-hand side and the victim was standing in front of him, with her back to the kitchen, so that she was facing Rudolf and the defendant.*

*The defendant started arguing with the victim and was shouting and swearing at her. The victim did not respond. The other woman present was telling the defendant to stop it and asking "what are you doing?". Suddenly and without warning the defendant flipped the dining table, stood up and attacked the victim by grabbing her hair.*

*Rudolf tried to pull the defendant off the victim and was shouting for her to stop but the defendant continued to attack the victim, pulling clumps of hair from her head.*

*The other woman and man present managed to separate the defendant from the victim. The victim went and stood in the kitchen and the defendant was stood only a short distance away in the dining room.*

*Rudolf then saw the defendant pick up a broken wine glass that had been smashed on the floor when the table was flipped over. Suddenly, the defendant lunged forward towards the victim and whilst holding the broken wine glass in her hand she attacked the victim for a second time. Rudolf could see a large cut to the victim's face which was caused by the defendant.*

*Rudolf then saw the other woman present punch the victim 3 times and grab her by the hair.*

*Rudolf called the police and the defendant; the other woman and man ran from the address.*

*Police officers arrived at 3.20am. Officer Brooks observed that the victim had sustained a deep laceration to the right side of her face which was bleeding profusely. She was shouting and in deep distress. Officer Pritchard saw that there was lots of broken glass and blood on the floor of the back room next to the kitchen. An ambulance arrived and the victim was taken to hospital. Dr Bordi describes that the victim sustained multiple deep lacerations to the right side of her face. She had*



*swelling of the right temporal area, right cheek, and jaw. She had 3 full-thickness lacerations: (i) right temporal regions vertical along hairline which was 4cm long; (ii) right temporal region medial was 3.5cm long; (iii) right cheek, semi-circular was 4cm long. She was treated with stitches under anaesthetic, oral antibiotics, analgesia, and cream. The scarring to the victim's face is permanent.*

*On 02/01/20 the defendant was interviewed by the police. She accepted that she had been present at Rudolph's home in the evening and early hours of 01/01/2020 along with the victim.*

*She said she left the house at 2 a.m. and did not assault the victim in anyway. She was bailed pending further CCTV and forensic enquiries.*

*The defendant was further interviewed on 05/03/20. It was put to her that the victim's blood had been found on a pair of leggings which belong to the defendant. She was unable to provide an explanation for this but maintained she did not assault the victim. She accepted that she was the woman captured on CCTV leaving the property at 3.06 a.m. - one minute before Rudolph made the 999 call to the police reporting the attack.*

*Nature and legal classification of the offence(s) and the applicable statutory provision/code:*

- 1. Wounding with Intent to do grievous bodily harm, is an indictable only offence, contrary to section 18 of the Offences Against the Person Act 1861.*
- 2. Unlawful Wounding, is an either way offence, contrary to section 20 of the Offences Against the Person Act 1861."*

I am satisfied that correspondence can be established between the offences referred to in the TCA warrant and offences under the law of this State, viz. Assault Causing Harm contrary to Section 3 of the Non-Fatal Offences Against the Person Act, 1997.

**16. Bail Offence**

The TCA warrant states that the respondent was bailed pending further CCTV and forensic enquiries, and has contravened a Bail Act offence contrary to Section 6 (1) of the Bail Act, 1976 which states:

*“If a person who has been released on bail in criminal proceedings fails without reasonable excuse to surrender to custody, he shall be guilty of an offence.”*

**17.** Additional information was also received from the Crown Prosecution Service dated 6<sup>th</sup> May 2022 in the following terms:

*“[...] Keisha Harty was due to appear before Liverpool Crown Court on 15th July 2021 for mention hearing in advance of her trial which was listed for hearing on 26th July 2021. She did not attend the hearing on 15th July 2021 and HHJ Aubrey QC issued a warrant for her arrest not backed with bail.”*

**18.** By way of additional information dated 10<sup>th</sup> June 2022, the issuing judicial authority stated:

*“I have provided a chronology below of the bail history and all court hearings in the case to date which I hope addresses the queries raised in points 1 and 2.*

*1. 16/06/20 - Charge s.18 Wounding with Intent on 01/01/20 authorised by CPS.*

*2. 18/06/20 - Postal requisition dated 18/06/20 sent by Merseyside Police to defendant’s home address advising her of her requirement to attend Wirral Magistrates Court on 02/09/20 at 1.45 p.m. in answer to the charge.*

*3. 02/09/20 – The defendant did not attend court and a warrant was issued for her arrest not backed with bail.*

*4. 14/12/20 – The defendant appeared in custody before Liverpool Magistrates having been arrested on warrant. No plea was entered to the charge of s.18*

*Wounding with intent. The case was sent to Liverpool Crown Court for trial. A Plea*

*and Trial Preparation Hearing was listed on 11/01/21 at 9.45 a.m. at Liverpool Crown Court.*

*Bail was granted subject to conditions: -*

- Residence at 67 Highfield Road, Birkenhead, CH42 2BU*
- Daily Curfew between 8 p.m. and 8 a.m.*
- Not to enter Tudor Road, Tranmere.*
- Not to contact the complainant Nicola Hilton or witness Anna Rudolf.*

*5. 05/01/21 – The defendant appeared in custody at North Liverpool Community Justice Court charged with breach of her bail conditions. She had provided an incorrect address to the court on 14/12/20 for the purpose of being granted bail.*

*There was evidence before the court that the defendant had not been residing at the address and curfew monitoring equipment was unable to be installed. The defendant admitted the breach of bail. The defendant was remanded into custody to appear before Liverpool Crown Court on 11/01/21 as before.*

*6. 11/01/21 – The defendant appeared before Liverpool Crown Court for Plea and Trial Preparation Hearing. Not guilty pleas were entered to the charges of S.18*

*Wounding with intent and S.20 Unlawful Wounding (alternative offence after trial). A trial date fixed for week commencing 26/07/21 with an estimated length of hearing of 3 days. The defendant was further remanded into custody.*

*7. 01/02/21 – Case listed for defendant bail application. The prosecution agreed bail with the following conditions:*

- Condition of residence at BASS accommodation – Room 3, 2 Stocks Road, Preston, Lancs PR2 2SX*
- Defendant to comply with accommodation agreement conditions*
- Curfew between 8 p.m. and 6 a.m.*

- *Not to enter Birkenhead*
- *Not to contact Nicola Hilton, Anna Rudolph and Tracey Morgan*
- *Not to apply for travel documents/passport*

8. *12/07/21 - The defence solicitor acting for the defendant filed a Certificate of Trial Readiness with the court dated 12/07/21 stating as follows:-*

*“The defendant was granted bail to stay at BASS accommodation. We were informed in March that there was a problem with the address and that the defendant had breached her contract with BASS. We understand that she was asked to leave the accommodation. Our last contact with BASS was 1.4.21 when they informed us that they would not provide further accommodation and that Probation would be rehousing the defendant. We have been trying to contact the defendant to obtain the new address, but we have lost contact. BASS do not know where the defendant now is, and the defendant has not responded to calls to her mobile telephone. Last contact via text message on 29.3.21 confirming that she had to find a new address. Instructing solicitors have been unable to make a bail variation as we do not know where the defendant currently is, and she is not responding to messages or calls.”*

*Following an administrative review by the court, the case was listed for mention (defendant to attend) on 15/07/22. In accordance with procedure whereby a defendant is represented in the proceedings, an email was sent by the court to the secure email address at Quinn Melville solicitors (acting for the defendant) at 11:17am on 13/07/2021 to inform them of the hearing. 10. 15/07/21 – mention defendant to attend. The defendant did not attend the hearing. Defence Counsel confirmed that the defendant had not been in contact with her solicitors for some time. The defence had not received any further information about the defendant or her whereabouts. HHJ Aubrey QC issued a warrant for the defendant’s arrest not*

*backed with the bail. HHJ Aubrey QC directed that if the warrant had not been executed by 22/07/21 the case was to be listed for further mention hearing on 23/07/21 for the prosecution to make application to proceed to trial in the defendant's absence.*

*11. 23/07/21 - Listed for mention for progress. No update regarding the defendant's whereabouts. No decision made regarding proceeding to trial in absence. Decision to be made on trial date 26/07/21 if necessary.*

*Post hearing on 23/07/21 information was provided to prosecution Counsel by the Court Police Officer that he had received information that the defendant was incarcerated in Ireland. She was sentenced to Limerick Prison on 13/05/21 with a sentence expiry date of 12/11/21, Earliest release date of 27th of September 2021. It was suspected she may be out on temporary release (TR) from Prison, but this could not be confirmed in advance of the trial date on 26/07/21.*

*12. 26/07/21 - All witnesses attended Court to give evidence at the trial. The defendant did not attend. Prosecution Counsel applied to proceed to trial in the defendant's absence. Defence Counsel objected to the application and the application was refused by Mr Recorder Unsworth QC. The trial was adjourned to the week commencing 28/03/22. A further mention hearing was listed for 27/08/21 for any updates from Crown as to the defendant's earliest date of release from prison.*

*Post hearing on 26/07/21 information was provided by Merseyside Police that in fact the defendant had been released from prison by 26/07/21 on a temporary basis to 384 Blarney St, Gurrabraher, Cork, T23 E424, Ireland. Next of kin is John McNamara. Specific date of release not confirmed at this time.*

*13. 27/08/21 – Mention – defendant not required to attend. Matter listed for prosecution to provide the court with an update as to the defendant's whereabouts.*

*The court was informed that the defendant had been serving a custodial sentence in Limerick Prison, Southern Ireland, however, she had now been released from prison on a temporary basis to 384 Blarney St, Gurrabraher, Cork, T23 E424, Ireland. Next of kin is John McNamara. Other than this, there is no further update. The defence confirmed they had written twice to the above address but had no engagement from the defendant.*

*HHJ Potter ordered that by 08/09/2021 the defence were to write to the defendant again at 384 Blarney St, Gurrabraher, Cork, T23 E424, Ireland. informing her again of the trial date, of the importance that she should attend court for trial and the consequences of her not attending trial – i.e. being tried in her absence.*

*14. 03/11/21 – confirmation was received from Merseyside Police via the National Crime Agency that the defendant was released from Limerick Prison on Reviewable temporary release to a Community Support Scheme on 24/06/21 until her release date of 27/09/21. She gave her date of birth as 02/09/96 (correct). 384 Blarney Street, Cork was the address provided. She was required to remain in contact with the service providers, Cork Alliance and addiction services until her release date. The defendant had therefore, been released from prison in advance of the original trial date of 26/07/21.*

*15. 22/03/22 – Mention in advance of trial date fixed for 28/03/22. Court advised still no further contact from defendant and she has not yet been arrested on warrant. Prosecution to consider application to proceed to trial in absence. Case to remain listed for trial on 28/03/22 although the witnesses were not warned to attend until 29/03/22.*

*16. 28/03/22 – The defendant did not attend court for trial. The Prosecution did not apply to proceed with the trial in her absence. The trial was re-listed for 24/10/22.*

*The warrant for the defendant's arrest remains outstanding. The court and defence were advised that the prosecution will apply for to proceed to trial in the absence of the defendant on the next occasion. Case listed for mention on 07/10/22 for prosecution to update the court.*

*With regards to point 3, the victim attended court to give evidence at the original trial date fixed for 15/07/21. The victim was warned to attend trial on 29/03/22 and confirmed she would attend court. The victim has been warned to attend the trial listed for 24/10/21. There is no information available to suggest that the victim will not attend court on the next occasion or that she wishes to withdraw her complaint. The assault was witnessed by Anna Rudolph. Even if the victim was to withdraw her support, the prosecution would still be viable based on the evidence of Anna Rudolph.”*

**19.** The respondent concedes that the bail bond would have implicitly required her to attend court dates.

**20.** The applicant says that the corresponding candidate offence in this jurisdiction is a failure to surrender to bail, contrary to Section 13 of the Criminal Justice Act 1984, which states; -

*“13.(1) If a person who has been released on bail in criminal proceedings fails to appear before a court in accordance with his recognisance, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding twelve months or to both.*

*(2) It shall be a defence in any proceedings for an offence under subsection (1) for the accused to show that he had a reasonable excuse for not so appearing.*

*(3) For the purpose of section 11 an offence under this section shall be treated as an offence committed while on bail.*

*(4) Where a person has failed to appear before a court in answer to his bail and the court has directed that a warrant be issued for the arrest of that person by reason of his failure to answer his bail, a member of the Garda Síochána may arrest such a person notwithstanding that he does not have the warrant in his possession at the time of the arrest.*

*(5) Where a person is arrested pursuant to subsection (4) the member arresting him shall as soon as practicable produce and serve on the said person the said warrant.*

*(6) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this section may be instituted within 12 months from the date on which the offence was committed.”*

**21.** The respondent relies on *Minister for Justice and Equality v. Prieto* [2016] IECA 90 which is an authority for the proposition that the offence of failure to turn up in Court, in accordance with terms of conditional release, can correspond with the offence under Section 13 of the Criminal Justice Act, 1984, but not with the common law offence of Criminal Contempt of Court. Finlay Geoghegan J. and Peart J. Held therein, that there is no requirement to show that a monetary recognisance was entered into by the requested person in order to show correspondence with the offence under Section 13 of the Criminal Justice Act, 1984.

**22.** Regarding that which must be shown in order to demonstrate correspondence, Finlay Geoghegan J. Held; -

*“[T]he essential ingredient of the s.13 offence in a failure to turn up in breach of a condition to which the accused agreed which granted bail.” [sic]*

Similarly, Peart J. Held; -



*“Despite the words of the Scottish s.102A, the reality, as I have explained above, is that the Scottish offence is committed when the accused fails to appear when he had an obligation to appear. There could be no such offence committed if he was not under a legal obligation to appear.”*

23. The respondent submits that correspondence cannot be shown. He submits that a failure to surrender to bail is an offence only triable by the Court in respect of which a failure to surrender had occurred. In this case, the offence was triable by the Crown Court. Further, he submits that the legal obligation to appear is not relation to a specific date, and it should be.

24. **Discussion**

The High Court must be satisfied as to correspondence for the offences on the warrant or, alternatively, that the issuing judicial authority has utilised the provisions of Article 2.2 of the Framework Decision so that correspondence for an offence or offences on the warrant does not need to be shown. Section 38(1) of the 2003 Act (as amended by Statutory Instrument 150 of 2021) provides:

*“Subject to subsection (2), a person shall not be surrendered to an issuing state under this Act in respect of an offence unless —*

*(a) the offence corresponds to an offence under the law of the State, and —*

*(i) under the law of the issuing state the offence is punishable by imprisonment or detention for a maximum period of not less than 12 months, or*

*(ii) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence in the issuing state, and the person is required under the law of the issuing state to serve all or part of that term of imprisonment,*

*or*

*(c) in the case of a Trade and Cooperation Agreement arrest warrant, the offence is an offence to which paragraph 5 of Article LAW.SURR.79 of the Trade and Cooperation*

*Agreement applies and under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than 3 years.”*

**25.** The correspondence inquiry for this application is further governed by Section 5 of the 2003 Act (as amended), which provides; -

*‘For the purposes of this Act, an offence specified in a relevant arrest warrant corresponds to an offence under the law of the State, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the relevant arrest warrant is issued, constitute an offence under the law of the State.’*

**26.** In *Wyatt v. McLoughlin* [1974] I.R. 378 Walsh J. provided clear guidance at p.395, that the test was one of recognition insofar as it consists of assessing whether the facts set out on the warrant would amount to a criminal offence in the State. Walsh J. stated therein; -

*“The District Court here has to be satisfied that an offence laid in a warrant sent here and endorsed for execution is so stated as to be recognisable as corresponding with an offence under our law. It must, therefore, contain such essential factual material as may be necessary to recognise whether or not the acts complained of are ones which, if committed in this country, would amount to a criminal offence.”* (Emphasis added)

**27.** In addition, Walsh J. declared at p. 395 that the courts in this jurisdiction; -

*"In proceedings such as these [are] ... not at all concerned with the construction of English law."*

Instead, the test posited by Walsh J. focused on assessing the facts in the warrant to see if they were “recognisable” as a criminal offence in this jurisdiction.

**28.** The manner in which the correspondence inquiry is undertaken was also addressed by Henchy J. in *Hanlon v. Fleming* [1981] I.R. 489, wherein he stated at p. 495 therein; -

*“The third point raises the question whether the specified offence has the required correspondence with an offence under the law of this State. The relevant decisions of this Court, such as *The State (Furlong) v. Kelly* [1971] I.R. 132, *Wyatt v. McLoughlin* [1974] I.R. 378 and *Wilson v. Sheehan* [1979] I.R. 423 show that it is a question of looking at the factual components of the offence specified in the warrant, regardless of the name given to it, and seeing if those factual components, in their entirety or in their near-entirety, would constitute an offence which, if committed in this State, could be said to be a corresponding offence of the required gravity.”*

Indeed, Henchy J. stressed in his judgment therein that correspondence would not be established by looking at the name of the offence itself under the law of the issuing state. Rather, the description of the facts for the offence is the key consideration. This was reiterated in *Attorney General v. Dyer* [2004] 1 I.R. 40, wherein Fennelly J. stated at para. 17 therein; -

*“[T]he correspondence inquiry depends on the facts alleged in the warrant”.*

Nevertheless, Fennelly J. accepted in *Dyer* that words used in an extradition warrant could be given their ordinary meaning so that they would be attributed the meaning that would, in the normal course of events, be ascribed to them under Irish law. Having considered the various authorities relating to the correspondence inquiry, Fennelly J. stated as follows at para. 20; -

*“Normally, words used in an extradition warrant will be given their ordinary meaning. This enables the courts to give effect, without resort to extrinsic evidence, to extradition requests where words such as "steal," "rob" and "murder" are used. It is possible that such words have different meanings in the law of the requesting state, but, in the absence of anything suggesting that, the courts will examine correspondence by attributing to such words, when used in a warrant, the meaning that they would have in Irish law.”*

**29.** In *Wilson v. Sheehan* [1979] I.R. 423, Henchy J. addressed the words used in a warrant

as follows at page 429; -

*“When it comes to the words in the warrant by which the factual content of the specified offence is identified, the correct rule is that those words should prima facie be given their ordinary or popular meaning unless they are used in a context which suggests that they have a special signification. The reason for that rule is that, when statutes or other public or formal documents directed to the public at large, or to any member of the public at large, are being interpreted, it is to be assumed, in the absence of a counter-indication, that the words used in such document have been used in their popular rather than in any specialised or technical sense.”*

**30.** The decision of the Supreme Court in *Minister for Justice v. Szall* [2013] IESC 7 is also relevant, as it dealt with the fact that statutory or regulatory offences in other jurisdictions may be defined in a different manner. Nevertheless, the Supreme Court was satisfied that correspondence could be established in such circumstances, once there is sufficient similarity between the legislative regimes, and the Court can be satisfied that the same activities are being criminalised in both jurisdictions. Clarke J., writing for the Supreme Court, explained this at para. 40; -

*“[40] It does not seem to me that such was the intention of the Oireachtas or, indeed, the Framework Decision. The proper approach is to regard an Irish regime case as amounting, for the purposes of correspondence and of s. 5 of the Act of 2003, to an offence where the act or omission concerned is defined by reference to a lawful regime rather than the specific Irish regime. Where, therefore, the offence specified in the relevant European arrest warrant involves the same acts or omissions by reference to a regime in the requesting state then, at least at the level of principle, correspondence can be established provided that there is a sufficient similarity between the respective regimes to justify the conclusion that the substance of the acts or omissions which*

*amount to offences in the respective jurisdictions is the same even though the specific relevant regimes will necessarily be, as a matter of law, different, emanating as they will from the legal systems of the two separate jurisdictions.*

*[41] Where, therefore, the court has to consider correspondence in such cases it seems to me that the question which the court must ask itself is as to whether the respective regimes meet that test. Are the two regimes, as a matter of substance, sufficiently similar that it can properly be said that acts or omissions which are rendered criminally unlawful by reference to those two regimes must in themselves be regarded as corresponding wrongdoing?"*

**31.** It seems to this Court that the following matters must be established in order to demonstrate correspondence with the offence under Section 13 of the Criminal Justice Act, 1984:

- The respondent made a commitment to appear in court on all dates on which she had a legal obligation to appear and;
- The respondent failed to appear in court on a date on which she had a legal obligation to appear.

It is submitted by the respondent, that the information contained on the warrant and in the additional information, does not demonstrate the above.

**32.** In this Court's view the important aspects of the information provided by the issuing judicial authority confirms the following:

- (i) That the respondent was granted bail on the 1<sup>st</sup> of February 2021 by a Court.
- (ii) That the bail order had an implicit condition that would have required the respondent to turn up at every subsequent court hearing, when she was required to attend.

- (iii) On the 12<sup>th</sup> of July 2021, the respondent did not turn up to the court hearing as required, but her solicitor did, and he explained that the respondent had breached her residency condition.
- (iv) The case was further listed for mention on the 15<sup>th</sup> of July 2021, and the respondent was required to attend on that date. She did not attend on that date and her solicitor indicated that she had not been in contact with the firm for some time, and that she remained uncontactable. On this date, a warrant was issued for her arrest.
- (v) The respondent further failed to appear on the 28<sup>th</sup> of March 2022.

**33.** In applying the principles set out in Dolny and Dyer as above, I am satisfied that had the above acts taken place in this jurisdiction, the respondent would be found guilty of the offence of failure to surrender to bail contrary to Section 13 of the Criminal Justice Act, 1984.

**34.** The respondent further submits that correspondence cannot be shown as he submits that a failure to surrender to bail is an offence only triable by the Court in respect of which a failure to surrender had occurred. In this case, the offence was triable by the Crown Court. Further, he submits that the legal obligation to appear is not in relation to a specific date, and it should be. Both submissions are without merit.

**35.** I am fortified in my views in this regard, by the words of Mr. Justice Peart in Prieto, as above, wherein he states at para. 42; -

*“[42] With respect to the trial judge, her focus on the words “in accordance with his recognisance” is a distraction to the task of finding correspondence and led to an undue focus on whether there is equivalence of offence. It failed to recognise that what is important for correspondence is the fact that a solemn commitment or undertaking to appear in court when required was given as a condition of being given bail, and that it was breached, and not the manner in which that commitment or undertaking was given.”*

**36.** I am also satisfied that there is sufficient similarity in the legislative regimes of this state and the issuing state.

**37.** This Court, therefore, finds that there is correspondence between the offence contrary to Section 6 of the U.K. Bail Act, 1976 and an offence in this jurisdiction contrary to Section 13 of the Criminal Justice Act, 1984. I dismiss this ground of objection.

**38.** I am satisfied that the surrender of the respondent is not prohibited by reason of the Part 3 of the Act of 2003 or any other provision of that act.

**39.** It therefore follows, that this Court will make an order pursuant to Section 16 of the Act of 2003 for the surrender of the respondent to the Kingdom of Great Britain and Northern Ireland.