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Neutral Citation Number: [2024] EWCA Crim 1638  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT PRESTON  
(HIS HONOUR JUDGE PRESTON) [T20237051]

Case No 2024/00863/B4  
2024  
2024/01013/B4 & 2024/01016/B4

Wednesday 18 December

**B e f o r e:**

**LORD JUSTICE LEWIS**

**MR JUSTICE GARNHAM**

**MR JUSTICE MARTIN SPENCER**

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**R E X**

**- v -**

**HILTON MHASVI**  
**RAIHAN MIAH**  
**NABID UDDIN**

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Computer Aided Transcription of Epiq Europe Ltd,  
Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE  
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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**Mr M McAlinden** appeared on behalf of the Applicant Hilton Mhasvi  
**Mr J Fitzgerald** appeared on behalf of the Appellant Raihan Miah  
**Mr S Garbett** appeared on behalf of the Appellant Nabid Uddin

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**J U D G M E N T**

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Wednesday 18 December 2024

**LORD JUSTICE LEWIS:** I shall ask Mr Justice Garnham to give the judgment of the court.

**MR JUSTICE GARNHAM:**

**Introduction**

1. In 2023, Hilton Mhasvi, Raihan Miah and Nabid Uddin stood trial before His Honour Judge Darren Preston and a jury in the Crown Court at Preston on a single indictment. By count 1 they (and others) were charged with conspiracy to pervert the course of justice. By counts 2 and 3, Hilton Mhasvi was charged with unauthorised possession of a device capable of transmitting or receiving images, sounds or information by electronic communication. By count 4, Nabid Uddin was charged with the unauthorised transmission of images or sound by electronic communication from within a prison. By count 5, Uddin was charged with possession with intent to supply a psychoactive substance. By count 6, he was charged with failure to comply with a notice to disclose the key to protected information.

2. On 19 September 2023, Miah changed his plea to guilty to count 1. On 24 November 2023, Mhasvi and Uddin were convicted on count 1. In addition, Mhasvi was convicted on counts 2 and 3, and Uddin was convicted on counts 4, 5 and 6.

3. On 12 February 2024, Mhasvi was sentenced on count 1 to 78 months' imprisonment, and on count 2 to 12 months' imprisonment to run concurrently. On 23 February 2024, Miah was sentenced to 66 months' imprisonment on count 1; and Uddin was sentenced to 42 months' imprisonment on count 1, to a concurrent term of eight months' imprisonment on count 4, and to consecutive terms of nine months' imprisonment and three months' imprisonment on counts 5 and 6 respectively, making a total of 54 months' imprisonment.

4. Mhasvi now renews his application for leave to appeal against sentence following refusal by the single judge. Miah and Uddin appeal against sentence by leave of the single judge.

### **The Facts**

5. The facts can be summarised shortly. In August or September 2022, Mhasvi, Miah, a co-defendant Benedict Larbi and two other men were arrested and charged with offences of conspiracy to rob, to kidnap and to commit theft against Danesh Hussain and his brother Haris Hussain. The allegations arose on 11 August 2022, when the five men had travelled from the south of England in order to carry out an attack on both Danesh and Haris Hussain whilst armed with an imitation firearm and a knife. After their arrest, the five men were all remanded into custody pending their trial.

6. The original allegations were due to be tried on 16 January 2023. As part of the investigation, Danesh and Haris Hussain, along with their father Abid, each provided witness statements in support of the Crown's case. Shortly before the trial, Danesh and Haris requested screens for their evidence. However, none of them attended court for the start of the trial. Accordingly, an investigation into their whereabouts began.

7. It was discovered that Mhasvi, Larbi and Miah had entered into an agreement with the three witnesses to arrange their departure from the UK the day before the trial, in return for money. Those on remand were assisted by the co-defendants Sandrah Mhasvi (Mhasvi's sister), Wahid Hussain and the appellant Uddin in negotiating the final settlement terms and ultimately arranging the payments through certain cryptocurrency exchanges, facilitated by another co-defendant, William Eke.

8. The investigation revealed that the agreement had been facilitated by phone calls in and

out of prison. Those on remand were able to associate with each other and develop the plan in custody. Hilton Mhasvi, Miah, Azimi and Larbi had been on the same wing as each other in various different formats throughout their remand. By 6 January 2023 their plan was in place. Larbi told a friend about the plan on 8 January 2023, the day that Danesh and Haris Hussain asked the police for special measures.

9. The level of contact between these men increased in the days running up to the trial. On 13 January, Abid Hussain bought flight tickets to Pakistan for his sons. The following day, he bought a ticket for himself. Abid, Danesh and Haris Hussain left the UK on the 8.40 pm flight to Pakistan on 15 January 2023. On the day of the trial, police were told that Abid, Danesh and Haris had travelled for a family emergency. They did not send any evidence to support that assertion and later in the week said that they would return the following weekend. A court summons was issued. Only Abid returned that Sunday. However, his evidence was not crucial to the Crown's case, as all he had done was to find a mobile phone left behind by the attackers. The brothers Danesh and Haris provided the crucial evidence of the attack. They did not return to the UK or ever answer the court summons, which led to arrest warrants being issued for both of them.

10. Uddin went to court on 19 January 2023. Having been seen using his phone in the public gallery, he was stopped. Two phones were seized. He refused to provide the PINs for them, including later when he said that the PIN was 0000 in response to a notice under section 49 of the Regulation of Investigatory Powers Act 2000. Police were able to see that that phone had been in contact with Hilton Mhasvi's phone in prison. Uddin's car was parked outside the court illegally. It was searched and found to contain two boxes, each containing six canisters of "cream deluxe" nitrous oxide and a packet of silver balloons. Miah was later to comment: "Obviously he thought we were coming out this week innit. He wanted to have a party". Uddin was arrested and interviewed. He declined to answer any of the questions asked.

11. At 5.50 pm on 24 January 2023, Hilton Mhasvi was arrested at Preston Crown Court on suspicion of witness intimidation, conspiracy to pervert the course of justice and having a mobile phone in prison. He made no reply. In interview, he provided a prepared statement denying the offences. He said that the victims were not in fear for their safety and made no further comment. A little later that same day, Miah was arrested at Preston Crown Court on suspicion of witness intimidation, conspiracy to pervert the course of justice and having a mobile phone in prison. He made no reply. He was interviewed on 17 April 2023. He provided a prepared statement in which he denied involvement in conspiracy to pervert the course of justice. He said that the phone number in question was in use by his partner and family outside prison. After his arrest, Hilton Mhasvi was transferred to His Majesty's Prison Altcourse. Examination of Eke's phone showed regular communication with a number ending in 3828, a phone transmitting from the area of HMP Altcourse. Between 3 and 29 March 2023, over 500 messages were sent between the 3828 number and Eke's phone, including screenshots of the cryptocurrency rates on 12 January 2023.

12. The judge sentenced the appellant Miah and the applicant Mhasvi without a pre-sentence report. We agree that they were not necessary then and are not necessary now.

13. Addressing Mhasvi and the co-defendant Larbi on 12 February 2024, the judge said this:

"This was an elaborate, sophisticated and concerted plot in which both of you played a significant part and which resulted in the perversion of justice in relation to a very serious criminal trial. ...

You, Mhasvi, were the principal driving force behind this offence. You obtained burner phones which you used in custody illegally to put your scheme in train. You made multiple calls. You were careful to use whenever you could the illicit phones. ...

You were assisted by multiple individuals whom you recruited  
...  
You were not only the main perpetrator, but you two were the  
main beneficiaries of the perversion of justice."

14. Addressing Miah, Uddin and two others on 23 February 2024, the judge said this:

"This was in its entirety when you stand back and look at the  
broader picture an elaborate, sophisticated and concerted plot in  
which you each played a significant part, a crucial part, which  
resulted in the perversion of justice in relation to a very serious  
criminal trial.

You, Miah, were the direct beneficiary of the plan in escaping  
serious criminal charges.

...

Uddin, you also acted as a middleman, contacting others, albeit  
I accept with a little less frequency and less valued effect than  
others, but you attended at court to report on the trial and when  
you were seen to use a phone in court you refused repeatedly to  
disclose your PIN. ... You were even arrogant enough to park  
your car outside court illegally despite it containing large  
quantities of nitrous oxide, which you no doubt intended to  
supply to the others imagining that they would be released once  
the trial was over. ...

...

The guideline for the principal offence, which is the perversion  
of justice offence, suggests a starting point of four years'  
imprisonment and a range of two to seven years and this case is  
a long way from the bottom end of that category, aggravated as  
it is by the offences being committed and orchestrated from  
inside prison, the extremely serious underlying offences and the  
sophistication of the scheme."

## **Discussion**

### Mhasvi

15. On behalf of Mhasvi, Mr Michael McAlinden argues that the starting point taken by the  
judge on count 1 was too high and that the sentence of six and a half years' imprisonment was  
manifestly excessive. He says that Mhasvi's personal mitigation was not sufficiently taken

into account and that the total sentence of six and a half years' imprisonment is therefore manifestly excessive.

16. There is no argument about the categorisation of this offence. The judge was plainly correct to characterise it as A1, with a starting point of four years' custody and a range of two to seven years. It is said that the judge was wrong to increase the starting point from four years to reflect the notional sentence that would have been imposed for the original offences for which Mhasvi was awaiting trial, and/or that insufficient credit was given for his personal mitigation.

17. In our judgment there is no merit in either of those arguments. The judge was careful not to "double count" the original offending in his sentencing because, as he pointed out, that was a feature which was already taken into account in categorising the offence for which he had to sentence the applicant.

18. Furthermore, there were a number of other serious aggravating features which the judge properly regarded as placing the applicant's offending towards the top of the range. The applicant was the principal driving force in a sophisticated and elaborate plot to ensure that the witnesses did not give evidence against him, so that his trial would be aborted. He was one of the main beneficiaries of that plot. He took care to use illicit phones to carry out his plans in order to avoid detection. He involved other individuals in the plot, including his sister, who was also convicted as a result, and an innocent third party, Mr Eke, who had to undergo a full trial before being acquitted. In addition, Mhasvi was convicted of the two further communications offences which aggravated the overall offending.

19. As to the second criticism, the judge took account of the fact that the applicant had no relevant previous convictions; that he had already spent a significant time in prison on the

original charges, which would not count against his sentence; that he had never previously spent time in custody; and that he was still comparatively young. The judge also noted that he had expressed remorse (albeit not regarded as particularly heartfelt). The judge had regard to his physical and mental health problems, in particular his impulsivity, but concluded that that had not materially contributed to the offending which had, by contrast, involved planned behaviour over a lengthy period, which was far from impulsive. As the single judge concluded, in those circumstances the judge was entitled not to regard these as matters which reduced the applicant's culpability.

20. We see no merit in any of the arguments mounted on Mhasvi's behalf. Accordingly we refuse leave to appeal against sentence in his case.

Miah

21. On behalf of Miah, Mr John Fitzgerald argues that the sentence imposed was manifestly excessive for five reasons: first, the starting point was too high; second, the judge equated the appellant's role and culpability to that of Hilton Mhasvi; third, the judge failed to give sufficient credit for the guilty plea in the circumstances of the case; fourth, the judge failed to take account of the available personal mitigation; and fifth, despite saying that he would, the judge did not take into account that the appellant had spent five months in custody between August 2022 and January 2023.

22. In our judgment, there is merit in Mr Fitzgerald's argument. This was a very serious case and Miah was a principal beneficiary of the conspiracy. However, the judge accepted that Miah had performed a lesser role than had Mhasvi. Unlike Mhasvi, Miah was not the instigator of the conspiracy and had not played a leading role in its co-ordination. He was not involved in the conspiracy for as long as others. Furthermore, unlike Mhasvi, he was not being sentenced in respect of additional offences, and his previous convictions were less



significant than those of Mhasvi.

23. In addition, Miah had available significant personal mitigation, not all of which was addressed by the judge. There was evidence of genuine remorse, notably in the letter to the court (to be found at T/19 on the Digital Case System). The offending took place shortly after Miah had lost his mother. He was providing for his wife and young child. He had worked hard in custody and this was his first custodial sentence. In addition, the judge said that he would bear in mind that he would not receive credit for the time spent in custody on the original charges; but in fact the judge does not appear to have taken that into account.

24. In our judgment, following a trial the appropriate sentence would have been five years' imprisonment. The judge allowed 15 per cent for Miah's guilty plea. It is submitted that the judge should have allowed a greater reduction by taking into account the pressure that the appellant was under when he wanted to enter his guilty plea. A guilty plea from Miah proved the conspiracy and made the case against his co-accused stronger – a fact that would have been all too apparent to his co-defendants. It was powerfully put by Mr Fitzgerald in this way:

"The appellant was in the same prison, on the same wing, transported on the same bus and waiting in the same cell as some of his co-accused. They were standing right next to him in the dock."

25. It is submitted that the court should have concluded that it was unreasonable to expect the appellant to have pleaded guilty sooner, given the existence of those pressures. We see some force in that submission. In our judgment, the appropriate credit for the guilty plea was 20 per cent, rather than 15.

26. Accordingly, we allow the appeal of Miah and substitute for the sentence of five years and six months' imprisonment a sentence of four years' imprisonment.

Uddin

27. It is argued by Mr Stephen Garbett on Uddin's behalf that the judge had accepted that Uddin had played a lesser role in the conspiracy and had noted his good character, immaturity and elements of strong mitigation, including the steps he had taken since being remanded in custody. Mr Garbett recognises that the judge was entitled to increase the sentence to reflect the fact that Uddin had used an illicit prison mobile phone to make the relevant contacts, but he submits that the judge took too high a starting point.

28. We consider that there is some force in that submission. The judge was undoubtedly right to move down from his starting point to reflect Uddin's lesser role and the shorter period of his involvement. The judge was also right to move upwards to reflect the use of the illicit phones in prison. However, on the judge's analysis the net effect was very modest – in our view too modest. If this was the only criticism of substance of the judge's conclusions, we might well have said that any adjustment would be mere tinkering but, as we will explain, it is not the only ground for criticism.

29. In our view, the sentence imposed on Uddin on count 1 should have been three years' imprisonment (not three years and six months).

30. The judge imposed consecutive sentences for possession of a psychoactive substance with intent to supply (the nitrous oxide) and failure to comply with a notice to disclose key protected information (his phone PIN). Mr Garbett argues that this was not a case of intending to supply for profit, but of social supply, and that the quantities involved were modest for this type of substance (which at the time it was legal to possess).

31. In our judgment, there is also some force in those submissions. Set against the sentence for the conspiracy, we regard the consecutive terms of nine months' imprisonment for possession of the nitrous oxide with intent and three months' imprisonment for the failure to supply the PIN to the phone to be excessive. We would quash the sentences imposed by the judge for those two offences and substitute a consecutive term of six months' imprisonment for the former and a concurrent term of three months' imprisonment for the latter.

32. That then produces a total sentence of 42 months' imprisonment instead of 54 months, made up of 36 months on count 1 (Conspiracy to pervert the course of justice), a consecutive term of six months' imprisonment for possession with intent to supply a psychoactive substance, and a concurrent term of three months' imprisonment for the failure to disclose the PIN.

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Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk