



Neutral Citation Number: [2020] EWHC 1440 (Admin)

Case No: CO/1732/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 June 2020

Before :

MR JUSTICE FORDHAM

Between :

GHEORGHE SANDU
- and -
ITALIAN JUDICIAL AUTHORITY

Applicant

Respondent

Ania Grudzinska for the applicant
David Ball for the respondent

Hearing date: 3 June 2020

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. This is an application for bail, pursuant to section 22(1A) of the Criminal Justice Act 1967, in circumstances where the magistrates court has previously withheld bail in these extradition proceedings. As Stewart J explained in Tighe [2013] EWHC 3313 (Admin) at paragraph 5, my jurisdiction, although sometimes described as an appeal, involves looking at the matter “afresh”. This has been a telephone conference hearing. It, and its original start-time, were listed in the cause list with contact details available to anyone who wished to dial in. Both counsel have addressed me in exactly the way that they would have done had we all been sitting in the court room. I am satisfied that this constituted a hearing in open court, that the open justice principle has been secured, that no party has been prejudiced, and that in so far as there has been any restriction on a right or interest it is justified as necessary and proportionate.
2. The applicant is aged 33 and faces extradition to Italy. He was originally from Romania. The EAW on the basis of which these extradition proceedings arise was issued in June 2019 and is a conviction warrant. It relates to a sentence of 3 years 10 months relating to rape and domestic violence offences, perpetrated on the applicant’s ex-wife and the mother of his daughter who is now aged 13. The applicant was arrested on 14 January 2020 and has been on remand ever since. Bail was refused on two occasions by two district judges: first on 14 January 2020 and again on 20 January 2020. Ms Grudzinska, for the applicant, points out that the applicant has been in custody ever since and that I should look at bail on the circumstances they are before me, afresh, as I do.
3. The case for bail really comes to this. The central submission made is that there are no grounds for believing that the applicant will not surrender to bail, especially given the stringent conditions that are put forward. So far as the sentence of custody is concerned given the period on remand I am told, in effect, it is now down to 3 years and 5 months. The applicant has yet to have his extradition hearing before the district judge. He is going to be resisting extradition by reference to article 8, and therefore he has an incentive to stay and fight his corner. He has what are said to be strong community ties, and a re-established relationship with his daughter: the materials described him as having had her to stay with him every other weekend. In her submissions Ms Grudzinska referred to the applicant as having restored his positive relationship with his daughter from ‘late 2019’, and the materials that I have pre-read referred to ‘2019’ is the date of re-establishing that relationship. He is also said now to have a positive relationship with the ex-wife who was the victim of the criminality. Indeed, she withdrew, as is not uncommon in domestic violence cases, her complaint, but the prosecution and conviction continued. She has put forward a statement on his behalf in these proceedings. His ties also include a relationship with a current partner, on the evidence since October 2016, with the two of them cohabiting. He has been in the United Kingdom, on the evidence, since March 2016. Reliance is placed on the facts that it is said that he did not breach any requirements to stay in Italy when he left Italy and when he came to the United Kingdom. There is, as things stand, no finding of fact that he is a fugitive. Nor does the respondent invite me, for the purposes of this bail hearing, to make any such finding of fact. The applicant has lived openly in the United Kingdom and documents have been produced relating to that. He describes in his evidence the work that he has done in the UK. The point is made that he has no convictions here in the United Kingdom and is of good character here. Conditions are

put forward which are said to allay any concerns that may arise as to failure to surrender. They include the surrender of his passport and identification documents but also the surrender of those of his partner who also originates from Romania. Other conditions include a residence condition with the prospect of an electronically-monitored curfew, requirements as to reporting and contactability through a constantly switched-on mobile phone, and the usual conditions relating to restriction on travel and travel attempts. The has, I am told, at great lengths and hardship to them, been able to put together an increased pre-release security in the, no doubt significant, sum of £5,000.

4. Bail is resisted by the respondent on the basis that there are substantial and significant grounds for believing that, notwithstanding such conditions, if released the applicant will fail to surrender. I agree with the respondent. In my assessment, there are substantial and significant grounds to consider that, if released, and notwithstanding the stringent conditions and their implications for all concerned, the applicant would fail to surrender. I am going to give my reasons as to why I have arrived at that conclusion.
5. The starting point is that, this being a conviction warrant, that there is no presumption in favour of the grant of bail. The next point, which is of great significance in my judgment, is the substantial length of the custodial sentence which the applicant faces were he removed to Italy. Even with the reduction for remand to date, the sentence he is facing is 3 years and 5 months of custody. On the face of it, that gives rise to a strong incentive to fail to surrender and to avoid those implications.
6. One of the key functions of the district judge hearing that has not yet taken place, but which is due to take place quite soon – in this case a hearing due to take place later this month – is that findings of fact will be made on the basis of evidence including oral evidence and cross-examination. I am not making findings of fact or even provisional findings of fact. I accept that there is, as things stand, no finding of fact that the applicant is a fugitive. However, on the face of the documents, it is relevant that he has recorded that he left Italy knowing that the criminal proceedings were ongoing, and that he was legally represented in those Italian proceedings. He has asserted that he did not know that he was subsequently convicted, that he had been told ‘not to worry’ and had been told that ‘there would be a suspended sentence’. I make no finding, but it is relevant to my assessment that that is a description which calls for circumspection, bearing in mind that I am necessarily evaluating risks on the evidence before me.
7. Similarly, so far as the private and family life and relationships are concerned, I do not have and I am not making concrete findings of fact. It is relevant, however, for me to consider, on the evidence, what the picture appears to be, in evaluating whether there is on the face of it a sufficient anchor to the United Kingdom to allay concerns relating to failure to surrender. Viewed from that perspective it is relevant, in my judgment, that the applicant had lost contact with the daughter who independently came to the United Kingdom with her mother in 2016 as did the applicant himself. He had come in March 2016; they came in June 2016. The evidence records that she wanted no contact with him until it was re-established which, as I have said, was in 2019 or late in 2019. It is in that context that I have to consider the circumstances and potential anchoring effect of that relationship, bearing in mind that he was arrested on 14 January 2020. So far as the current partner is concerned, her evidence explains that

she depends on the applicant so far as income is concerned, that she wants to stay with him, and she is anxious to keep him at liberty. The family circumstances, on the face of it, therefore do not provide me with confidence that there is an anchoring effect so far as the United Kingdom is concerned. Nor can I say that there is an anchoring effect in this case of the article 8 case that is in preparation to be put forward before the district judge. I emphasise that nothing that I say for the purposes of this bail application is intended to, or should, influence the evaluation that the district judge arrives at for the purposes of whether to order extradition. What I can say, as relevant for the purposes of bail, is that it does not seem to me on the face of it that the article 8 argument that is to be put forward would constitute a strong anchor to disincentivise an individual from failing to surrender if otherwise incentivised to do so.

8. The next point that is of relevance, in my judgment, is that the substantive hearing before the district judge is just a few weeks away. There is, moreover, in this case an obvious third country in the picture. Clearly, the applicant does not want to go to Italy and he is resisting going to Italy, as are those who support him including his current partner. But his country of origin, remembering that he is a 33 year old who came to the United Kingdom in 2016, is Romania. That is also the country of origin of his current partner. So far as the other circumstances are concerned, his home is an assured shorthold tenancy which on the documents is a place that can be left at 2 months' notice and involved a £900 deposit. So I am unable to find, for example, in the ownership of a property an anchoring effect. So far as the applicant's work is concerned, he describes various activities since he has been in the United Kingdom, including working in delivery, and as a painter, and latterly self-employed in security. That too is a feature which is relevant in my evaluation of what, on the face of it, would be a 'mobility' in the light of any incentive to fail to surrender.
9. I said I would need to evaluate the case afresh and do so on the basis of all the written materials and all the written and oral submissions that have been made. That is what I have done. I have not adopted a supervisory or review jurisdiction. But I have reached the same conclusion as the two judges who refused bail in this case back in January 2020. For all the reasons that I have explained this application for bail is refused.

3 June 2020