Neutral Citation Number: [2020] EWHC 2350 (Admin)

Case No: CO/2808/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 August 2020

Before :

MR JUSTICE FORDHAM

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Between :

SERWAN TEKTAS	**Applicant**
- and -	
FIRST INSTANCE COURT OF BRUSSELS, BELGIUM	**Respondent**

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Tom Hoskins (instructed by O'Keeffe Solicitors) for the **applicant**
Saoirse Townshend (instructed by the Crown Prosecution Service) for the **respondent**

Hearing date: 20 August 2020

Judgment as delivered in open court at the hearing

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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 in extradition proceedings, bail having been refused in the magistrates' court, by DJ Snow on 9 and 16 March 2020, and most recently by DJ Robinson on 28 July 2020. The applicant is aged 27 and is wanted for extradition to Belgium. My statutory function, pursuant to section 22(1A) of the Criminal Justice Act 1967 involves my consideration of bail "afresh": see Tighe [2013] EWHC 3313 (Admin) at paragraph 5. The mode of hearing was a BT conference call. The Administrative Court provided a prior opportunity for the parties' representatives to state any preference, or provide any reasons why remote hearing was considered inappropriate. Like the parties' representatives, I was - and remained - satisfied that a telephone hearing was appropriate. I heard oral submissions in exactly the way I would have done had we all been physically present in a court room. As regards open justice, the hearing and its start time – together with an email address which could be used by any person wishing to observe the hearing – were published in the cause list. The hearing was recorded. This judgment will be released into the public domain. By having a remote hearing, we eliminated any risk to any person, from having to travel to, or be present in, a court. I am satisfied that no right or interest was compromised and that, if there was any interference with or qualification of any right or interest, it was justified as necessary and proportionate. This was a hearing for which both Counsel helpfully provided skeleton arguments, which I was able to pre-read alongside the materials referred to, and they each made oral submissions emphasising salient features of the case from their respective positions.

2. The case advanced by Mr Hoskins on behalf of the applicant for the grant of bail is in essence – as I see it – as follows. This case concerns an EAW which is an accusation warrant, from which it follows that there is a statutory presumption in favour of the grant of bail, which is important in what he described this morning as a finely balanced case. Nothing in the circumstances of this case rebuts that presumption. There is no basis for proceeding by characterising the applicant as a fugitive from Belgian legal process. He has been in the United Kingdom for a very substantial period of his life: having come here in 2014 aged 21. During the 6 subsequent years here, he has been employed and has established or sought to establish businesses, and has strong ties which root him to the United Kingdom. During those 6 years he has no UK convictions and is therefore a person of good character here. He strongly denies involvement in the offending to which the EAW accusation warrant relates. He is also strongly resisting extradition raising a number of proper grounds, as Mr Hoskins has put it. He has yet to have a substantive hearing: that has been listed for 11 November 2020. Following that, were he unsuccessful, he would have a statutory right of appeal. He has a relationship with a partner and was cohabiting with her until his arrest in March of this year. She relies on him. He cooperated with the authorities by giving his correct name when encountered and arrested at Heathrow airport on 7 March 2020, on what was a legitimate trip he says to his and his partner's native Poland. He also cooperated with the authorities in Finland ,in relation to criminal proceedings there at the end of 2018, having returned there – he says - knowing that there was something 'dodgy'. Those proceedings culminated in a suspended sentence which he did not breach by returning to the United Kingdom and has not as things stand breached. Insofar as there are any concerns – which Mr Hoskins today accepts there are "to some extent" – as to risk of failure to surrender, these are allayed by bail conditions which are proposed. Those include returning to live with his partner in accommodation which I am told can be

identified, together with an electronically monitored curfew, and any reporting requirements. They include the retention of his seized passport and prohibitions on international travel activities. They also include a £5,000 security sourced from a family friend and the applicant is not, on the evidence, says Mr Hoskins a wealthy man.

3. In his oral submissions today Mr Hoskins emphasises a number of features. He emphasises that arrests took place in September, October and November 2019 of other alleged co-conspirators, and that the applicant was not arrested until March 2020. Mr Hoskins says if they were close conspirators, it would be odd if the applicant waited so long and then sought to flee. He says leaving the UK for Poland in March 2020 from Heathrow does not significantly add as a feature to the assessment of any likelihood that he would fail to surrender, particularly against that backcloth of those arrests. He submits that a conviction in Belgium would not necessarily automatically breach the Finnish suspended sentence so as to lead to activation, anywhere, of that sentence. He says the prospect of such activation also does not materially add to the assessment of risk. Mr Hoskins emphasises that the applicant has given an explanation of what happened – which can be taken to mean that he perceives himself as having a strong case as to the Belgian allegations – and that the applicant can also be taken to perceive himself as having a strong basis for defending the extradition proceedings. Finally, Mr Hoskins emphasises the debt of gratitude to the family friend in the context of the implications of forfeiture of the security and therefore its relevance and adequacy.

4. The respondent opposes bail on the basis that there are substantial grounds for believing that the applicant, if released and notwithstanding the bail conditions put forward, would fail to surrender. In her oral submissions today Ms Townshend says the significance of the Finland conviction and sentence lie not so much in the question of breach of suspended sentence conditions and activation, but rather in the concerns arising from that conviction, the nature of the dishonest criminal conduct, and the relatively recent date, all relevant to the risk of failure to surrender, and linking to what is alleged against him in Begium. She also emphasises features which she says suggest that the grounds for resisting extradition are all answered and cannot be regarded or perceived as being strong.

5. I am not prepared to grant bail in this case. In my assessment, based on all the evidence before this Court, there are substantial grounds for believing that the applicant – if released on bail on the conditions described – would fail to surrender. The reasons why I have arrived at that assessment are as follows.

6. The criminal offending alleged against the applicant by the Belgian authorities is serious criminality with the prospect of a substantial custodial term. The offences alleged involve forgery, fraud and computer-related crime. The documents record a maximum prison sentence of 15 years. At the heart of the criminal conduct, alleged to have been engaged in by a network based in the United Kingdom and Finland, in which the applicant is alleged to have been a significant perpetrator, was a bank transfer out of a company's account with a private Belgian bank in August 2019 in the sum of US$1.9 million. The applicant says that his phone Whatsapp account was being used by third party and that he too was being hacked. The alleged crimes in question constitute sophisticated, very high value, cross-border crime. The charges and the consequences, if they lead to conviction, stand as a strong incentive to avoid facing trial and are suggestive of a high degree of cross-border deception and financial means, all

of which relevantly supports a serious concern as to the risks of failing to surrender, in my assessment.

7. Alongside that alleged criminality, its nature and its implications, is to be put the Finnish criminal conviction which stands against the applicant. He was charged, convicted and sentenced with an offence of aggravated money laundering which took place in October and November 2018 and was a crime in Finland (wherever he was) – he accepts he spent time in Finland and is said to have pleaded guilty and been present before the Court. It is not said that he was on bail and adhered to bail: the position is not in evidence either way. But as a result, he has a criminal conviction which is significant in its nature. Also significant is that it led to a 14 month custodial sentence, suspended for an operational period which ends in June 2021. It follows from all that that he has a present conviction for an offence which on the face of it, in my judgment, is significant in its nature, and affects risk, as well as linking to the alleged criminality in Belgium under the EAW. The fact that the convicted offence took place in Finland, at a time when the applicant was based in the United Kingdom, has a particular resonance when the nature of the Belgian accusations is noted: what is alleged by the Belgian authorities is that there (i) was a UK/Finland network (ii) involved in computer-related fraud.

8. The applicant's partner is with him in the United Kingdom, and on the evidence they had a tenancy together in SW8. I am told she has moved to a new address which would be available to him if released on bail. Having said that, the partner came to the United Kingdom only in July/August 2019, and they moved in together in August 2019. The tenancy accommodation which they occupied had been described in her witness statement as precarious in terms of its affordability. Both the applicant and the partner are Polish nationals. She previously lived in Ireland. The nature and circumstances of the relationship, and the links to other countries, are indicative in my assessment, on the face of it, of a locational mobility.

9. The fact that the applicant is strongly resisting extradition is a double-edged feature. One possibility, if released on bail, is that he would stay here adhering to bail conditions and fight the extradition case through the proceedings. But in my judgment there are substantial grounds for believing that if released on bail, and notwithstanding the conditions, the applicant would make a different choice and would fail to surrender.

10. In my judgment, the circumstances of this case serve to rebut and displace the presumption in favour of the grant of bail. I have looked at the question of bail afresh to form my own assessment. But in the event I agree with the conclusion reached on three occasions by two District Judges, who themselves refused bail on the basis that they saw in this case substantial grounds for believing that the applicant would fail to surrender if released on conditional bail. The proposed conditions do not allay my concerns. Bail is refused.

20 August 2020