Neutral Citation Number: [2020] EWHC 2643 (Admin)

Case No: CO/3498/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7th October 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

LESZEK RADOSLAW HERBASZ **Applicant**

- and -

THE REGIONAL COURT IN GDANSK, POLAND **Respondent**

- -
- -

George Hepburne Scott (instructed by Bark & Co Solicitors) for the **applicant**
Tom Hoskins (instructed by the Crown Prosecution Service) for the **respondent**

Hearing date: 7th October 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.

....

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. The applicant is aged 43 and is wanted for extradition to Poland, in conjunction with a conviction EAW. DJ Snow ordered his extradition on 24 September 2020. He has an extant application for permission to appeal to this Court. DJ Snow refused bail on 28 September 2020, DJ Goozee having previously refused bail on 20 June 2020. My function involves looking at the question of bail "afresh" (Tighe [2013] EWHC 3313 paragraph 5).

2. The mode of hearing was BT telephone remote hearing. Both Counsel were satisfied, as am I, that this mode involved no prejudice to their clients. The open justice principle was secured through publication on the cause list of the hearing and its start time, together with an email address usable by any person who wished to observe the hearing. Anyone could attend, by sending an email and making a telephone call. The remote mode of hearing eliminated any risk to any person from having to travel to and be physically present in a courtroom. I am satisfied that it was justified and proportionate.

3. The essence of the case for bail, put forward by Mr Hepburne Scott in writing and orally today, contained the following key elements, as I saw them. There are, he says, "significant protective factors" in this case – and one in particular – whose effect is that there are no reasonable grounds for believing that the applicant if released on bail would fail to surrender or commit criminal offences. Although facing extradition, the applicant has his extant appeal and, being a Polish case, stands to have a secure basis of imperviousness to removal at least until after the case of Wozniak is decided by a Divisional Court in (I think) December, and beyond that if the issue in that case or his other grounds of appeal are vindicated. Of central significance – described today as the "most important" point – is the fact that the applicant has a 2½ year old son, currently cared for by the claimant's ex long-term partner (according the documents). The applicant is said to be seeking bail and release, having previously been sole carer until his arrest on 19 June 2020, to pursue his wish to become sole carer now and in the future and secure the welfare and interests of the son. All of this is against a backcloth of social services involvement, of mental health difficulties on the part of the partner who has been charged with attacking the applicant with a knife (confirmed by a letter which I have this morning seen) and she faces the prospect, if convicted, of a lengthy custodial sentence. So, the basis and main reason for seeking bail and for bail being appropriate is said to be so that the applicant can secure the arrangements regarding his son, described as clearly an overwhelming motivation. Proposed bail conditions are put forward to allay any concerns that might arise as to risk of failure to surrender or risk of further offending. The conditions include to live and sleep at a specified (and documentarily evidenced) address; a curfew every night monitored electronically; daily reporting to a police station; the retention of a passport and identification card; and a £3,000 pre-release security.

4. Bail is opposed by the respondent on a dual basis. First, that there are significant grounds for believing that, if released on bail and notwithstanding the conditions, the applicant will fail to surrender. Secondly, that there are significant grounds for believing that, if so released and notwithstanding those conditions, the applicant will commit further offences.

5. I am not prepared to grant bail in this case. In my assessment, looking at the matter afresh and considering the material before the Court objectively, the objections to bail are well-founded in each of the two respects relied on. The starting point is that, since this is a case of a conviction EAW, there is no presumption in favour of the grant of bail.

6. So far as failure to surrender is concerned, there are in my judgment the following key factors. First, and as a starting point, the applicant faces extradition to serve a 3-year custodial sentence in Poland. That is a significant custodial term likely to stand as a strong incentive to avoid it if he can. Secondly, his progress to date in resisting extradition is that he has failed before the primary decision-making judge, following a hearing. It is likely that he perceives himself to be in the 'last chance saloon' so far as his extant appeal and the Wozniak case are concerned. Thirdly, I am unable to regard him as an individual likely to have confidence in due process; nor to comply. That is because he refused to attend his substantive oral hearing before DJ Snow (24 September 2020). That was, and still is, attributed by him to a fear of Covid-19. Following enquiry, the District Judge made a finding that the applicant's failure to attend his substantive hearing was his "attempting to frustrate the proceedings". As the District Judge explained, the applicant was not claiming to be suffering from Covid-19, and had also refused to attend an earlier hearing (24 August 2020). There is no basis whatsoever for this Court going behind that finding for the purposes of the assessment of risk today. It is of itself a basis for considering that the applicant would fail to cooperate with conditions and comply. Fourthly, the fact of non-attendance at the substantive hearing is highly material when it comes to consideration of the position of the 2 year old son for whom it is said that the applicant has an urgent and overwhelming motivation to stand as primary carer, the relationship with the mother having clearly broken down. That would have been a central feature of the factual picture to put before the District Judge at the oral substantive hearing, given the importance of the welfare of a child in any article 8 ECHR analysis. The applicant did not do so. Fifthly, there is the scant nature of the evidence to support the assertions made (including in writing in a proof of evidence which I have read) about the applicant's son and steps being taken by or on behalf of the applicant in relation to his son. There has been ample warning. There was an absence of evidence before DJ Snow at the oral hearing, as he observed in his determination on 24 September 2020. He said there was no evidence, including of any contact since being remanded. Nor was he satisfied as to the evidence when asked to grant bail subsequently on 28 September 2020, on which occasion the same proof of evidence was relied on. I proceed on the basis that the applicant has a son, in whose life he has been actively involved. But today on 7 October 2020 there remains an absence of any supportive evidence of the motivating factor as to the present time and as to the supposed next steps. Sixthly, the applicant has a history of dishonest criminality at least from January 2003 when he committed an offence of fraud aged 26. There were subsequently a series of offences of theft, robbery, and handling of stolen property. Suspended sentences which were passed in Poland were activated for non-compliance with conditions imposed. Seventhly, the District Judge made findings of fact (which again there is no basis for going behind in the assessment of risk today) that the applicant had deliberately absented himself from trial in Poland in May 2018, having been summoned in April 2018, in relation to the drug dealing offending which is the subject of the conviction EAW and the 3 year custodial sentence. The District Judge also found that he had come to the United Kingdom as a fugitive (which the applicant

contests). He has therefore already once failed to surrender and has absconded from the authorities in relation to responsibility for the index offending. In my assessment, having regard to these factors and all the circumstances, there are substantial grounds for believing that, if released on bail and notwithstanding the conditions, the applicant will fail to surrender. On that basis, bail is refused.

7. Moreover, there are in my assessment also substantial grounds for believing that if released on bail and notwithstanding the conditions the applicant will commit further offences. I do not accept that this is "flimsy", as Mr Hepburne Scott put it. Nor am I persuaded by the fact that this was not a second basis for previous remand. There is a strong and sustained pattern of criminal offending in this case. That offending has continued through time notwithstanding requirements imposed on the applicant and opportunity given to him in particular by way of suspended custodial sentences. The index offence is one of drug dealing. The applicant has a previous conviction relating to drugs in Poland, for which he was sentenced to 12 months custody in October 2012. He is known to have been dealing in drugs by September 2016. When arrested on 19 June 2020 by police in the United Kingdom, the police found, described in witness statement evidence before the Court and summarised by the District Judge: "property consistent with drug supply" including "weighing scales" and "snap bags". Although not the basis of any criminal charge, still less conviction, that evidenced fact is relevant in my judgment to the assessment of risk. Neither the professed motivation regarding engagement in the extradition proceedings, nor the professed overwhelming motivation relating to the son, allay the concerns arising in this regard. Nor do the proposed conditions do so.

8. For all these reasons, bail is refused.