



Neutral Citation Number: [2020] EWHC 2816 (Admin)

Case No: CO/2016/2019

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**DIVISIONAL COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 26/10/2020

**Before:**

**LORD JUSTICE POPPLEWELL**  
**MR JUSTICE JAY**

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**Between:**

**BILAL HUSSAIN CHOUDHARY**

**Appellant**

**- and -**

**PROSECUTOR AT THE CRETEIL TGI, FRANCE**

**Respondent**

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**Ben Cooper QC and Malcolm Hawkes (instructed by West Midlands Solicitors) for the**  
**Appellant**

**Helen Malcolm QC and Alex Tinsley (instructed by the CPS) for the Respondent**

On written submissions

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**Approved Judgment**

**Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be Monday 26<sup>th</sup> October 2020 at 10.00am.**

### **Lord Justice Popplewell giving the judgment of the Court:**

1. On 19<sup>th</sup> October 2020 we ordered the discharge of the Appellant and quashed the order for his extradition. We adjourned the question of whether the Appellant was entitled to a narrative judgment. Although the French authorities had withdrawn the EAW on 15<sup>th</sup> October and s.42(3) of the Extradition Act 2003 mandated this course, we should briefly explain the background to this case and how and why we have reached the present position.
2. Bilal Hussain Choudhary was the subject of a conviction EAW issued by the French Judicial Authority on 28<sup>th</sup> February 2018. On 9<sup>th</sup> February 2017 Bilal Hussain Choudhary had been convicted in his absence of three offences of fraud, money laundering and tax evasion committed between September 2011 and June 2013. The EAW set out that he committed the offences in the Paris region through two limited companies incorporated in France and of which he was the manager.
3. The Appellant has always maintained that he is not the Bilal Hussain Choudhary wanted by the French authorities. His nominal details match those on the EAW but his case has always been that another man committed the offences specified in the EAW, and that in essence this is a case of stolen identity.
4. On 17<sup>th</sup> May 2019 District Judge Zani ordered the Appellant's extradition to France. He then appealed to this court and in July we heard his appeal advanced on five grounds. In our judgment handed down on 22<sup>nd</sup> July 2020 ([2020] EWHC 1966 (Admin)) we stated that we had prepared a draft judgment dismissing the appeal on Grounds 1-4. However, in the light of further information from the French prosecutor which had recently been made available, we decided to adjourn final consideration of those grounds until further inquiries had been completed. As for Ground 5 (prison conditions and article 3 of the ECHR), that too was adjourned pending the answer by the French authorities to a number of questions we posed.
5. In July the French authorities agreed to reconsider the Appellant's case on identity. On 22<sup>nd</sup> September Mr Ben Cooper QC on behalf of the Appellant filed detailed written submissions contending that he should be discharged forthwith. We did not respond to that invitation but were aware that further inquiries were being undertaken by the French authorities.
6. On 29<sup>th</sup> September 2020 the Public Prosecutor of the Republic at the Judicial Court of Creteil reported to the CPS the outcome of those further investigations. In short, the French authorities noted that the Appellant's fingerprints did not match those of the individual whom they were seeking. Further, a number of witnesses were shown photographs of the person whom French police understood to be Bilal Hussain Choudhary in 2013 (and was therefore the person they were seeking) and of the Appellant. None of the witnesses recognised the Appellant but two witnesses formally recognised the photograph of the first individual.
7. In the light of the foregoing, the French authorities concluded as follows:

“These elements support the fingerprint comparison tests and seem to exclude that the person named Bilal Hussein [sic]

Choudhary arrested on the basis of the European arrest warrant is the person wanted in France.”

8. We then directed the French authorities formally to set out their position in this appeal, and in an application for Habeas Corpus which the Appellant had by then brought, by no later than 4pm on Friday 16<sup>th</sup> October 2020. As we have said, the EAW was withdrawn on 15<sup>th</sup> October.
9. Mr Cooper submitted that: (1) the Appellant is entitled to a public judgment that sets the record straight and clears his name, (2) the fact that the wrong person has been the subject of legal proceedings for 2 years and 7 months is a matter of public concern, (3) a declaratory judgment is required for the purposes of the Appellant’s article 5 submission, and (4) the present case raises a matter of general public importance as to the correct legal approach where identity is disputed.
10. In our judgment, many of these submissions overstate the matter. It would not be proportionate to conduct an inquiry into what has happened in this case (or not happened) and, for example, whether the Respondent’s recent investigations should have been undertaken earlier. As has already been pointed out, neither District Judge Zani nor this court has held that the Appellant has been lying about his identity; the matter has proceeded on the basis of legal arguments which it is unnecessary to rehearse. It is not being suggested that the Appellant’s article 5 rights have thus far been violated, and the fact that his physical extradition (which has of course been halted) might have infringed his Convention rights is nothing to the point. Moreover, this is no longer the appropriate occasion for the court to rule on the correct legal test in mistaken identity cases.
11. However, we recognise the force of Mr Cooper’s submission that the justice of this case demands more than a court order recording that the Appellant has been discharged and that the order for his extradition to France has been set aside.
12. It is true that the clear effect of s.42(3) of the Extradition Act 2003 is that following the withdrawal of the warrant the Appellant was entitled to be discharged forthwith. This provision places no obligation on the court to set out any reasons; indeed, none would ordinarily be required because the court is merely responding to a *fait accompli*. On the other hand, s.42(3) cannot be interpreted as precluding the giving of reasons in the event that the justice of a particular case requires it (see, by analogy, in cases of the intervening death of an appellant or claimant, *Lodhi v SSHD* [2010] EWHC 567 (Admin) and *Bucnys and others v Lithuania and others* [2013] UKSC 71).
13. In the light of the history as we have briefly recorded it, in the circumstances of this case the Appellant is entitled to a brief judgment from us which sets out the position as well as the terms of the concession made by the French authorities, evidenced both by the letter dated 29<sup>th</sup> September and the withdrawal of the EAW, that it cannot sensibly be maintained that he is the person wanted in France for offences committed there between 2011-13.
14. We now invite brief submissions from the parties on the issue of costs.