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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2021] EWHC 1194 (Admin)



No. CO/1329/2021

Royal Courts of Justice

Wednesday, 21 April 2021

Before:

HER HONOUR JUDGE WALDEN-SMITH
(Sitting as a Judge of the High Court)

B E T W E E N :

THE QUEEN
ON THE APPLICATION OF
MARK HYAM

Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

MR G. LEE appeared on behalf of the Claimant.

MR J. LEWIS (instructed by the Government Legal Department) appeared on behalf of the Defendant.

J U D G M E N T

JUDGE WALDEN-SMITH:

- 1 This is an application brought on behalf of Mr Mark Hyam for interim relief. He is an adult at risk, currently detained within the prison estate at HMP Lewes under the care of the Secretary of State. The Secretary of State has not yet found him suitable accommodation, there having been an order for bail, in principle, granted by the First-tier Tribunal and extended on three occasions: the first grant of bail being made on 13 January 2021.
- 2 Mr Hyam is now aged 41, his date of birth being 8 March 1980. He is an Australian national who was granted entry clearance to the United Kingdom until 28 January 2009. That leave to remain was extended until 11 March 2019.
- 3 On 3 May 2019 Mr Hyam was arrested on suspicion of stalking and, on 28 July 2020, he was sentenced to nine months' imprisonment and a restraining order with respect to offences he had committed contrary to the Protection from Harassment Act 1997.
- 4 By 10 December 2020 Mr Hyam had served the custodial element of his sentence, but a deportation decision had been made on 10 November 2020 and he thereafter entered immigration detention. As I have already indicated, he is not being housed within a detention centre but remains within the prison estate. There is no clear reason being given to the court today as to why that may be, although there is the possibility that it is as a result of the nature of his offending and the background to that offending. Further information with respect to that offending is included within the various detention records that have been provided by the Secretary of State this morning.
- 5 The Secretary of State has accepted that the claimant is entitled to Schedule 10 accommodation. The application today for interim relief is brought because the claimant does not accept that the defendant has done all that she can reasonably do to obtain suitable accommodation for him. Mr Hyam continues to reside in HMP Lewes and it is clear from the reports from the prison that his mental health is in a precarious state. There are indications in those reports of self-harm and suicidal ideation and he has been spoken to by a psychologist. He has not yet been seen by a psychiatrist. Indications were given by Mr Hyam in those conversations with the psychologist, which were reported on 3 March 2021, that he was feeling anxious, depressed, paranoid and had suicidal thoughts. He believed people were trying to kill him.
- 6 In addition to those mental health difficulties, the claimant has various physical needs. Questions had been raised on behalf of the Home Secretary as to whether Mr Hyam has a need for either a Zimmer frame or a wheelchair as it was being suggested that he was not, in fact, using his Zimmer frame but merely sitting on it. It has been explained in submissions before me that he was only sitting on his Zimmer frame when waiting for his medication as he needed somewhere to rest and there was nowhere else to sit. It has been further confirmed to me in the course of submissions that he does, indeed, require wheelchair access for accommodation. Late yesterday I was provided with reports from the psychologist with respect to Mr Hyam's disturbing thoughts, including cannibalism and paranoia. Solicitors acting for Mr Hyam have asked for instructions from him overnight with respect to those reports and it has been explained by him that he was not making any serious suggestions. Indeed, he is surprised that what he said was taken seriously in any way whatsoever.
- 7 What the Secretary of State says today is that she will move, to quote counsel on her behalf, "heaven and earth" in order to find the accommodation that is necessary for Mr Hyam in this matter. It is not suggested by her in any way that his mental health should be a reason for her to detain the claimant and it is not suggested by her that the claimant's potential danger to

himself is a reason for continuing his detention. To do so would have been contrary to the *Hardial Singh* principles, which set out the basis upon which detention can continue. Cranston J in the case of *AA v. Secretary of State for the Home Department* [2010] EWHC 2265, the case referred to in counsel for the claimant's written submissions, said quite clearly that the use of immigration detention to protect a person from themselves, however laudable, is an improper purpose. The purpose of the power of immigration detention, as established in *Hardial Singh* and subsequent authorities, is for removal.

- 8 What the Secretary of State says is that the reason for the delays that have occurred in this matter are threefold. First, there is the obvious overarching difficulties that have been caused by reason of the COVID-19 pandemic: historically, that has caused difficulties with the movement of people into and out of accommodation, but also there has been an increased requirement for accommodation, which means that there have been added difficulties and delays. Secondly, any accommodation that would be found for the claimant has to be approved by the Probation Service. Given the nature of the offending of the claimant it is, if not definite, more likely than not that self-contained accommodation will need to be found. Thirdly, as a result of the physical disabilities of Mr Hyam, the pool of accommodation available is greatly narrowed. The information available indicates that Mr Hyam will require wheelchair accessible accommodation, not limited simply to him being able to get into the property. It will be necessary to identify a property without stairs or a property with a lift. It will also have to be accommodation that will enable him to move around within the property in a wheelchair. Those requirements necessarily limit the stock available.
- 9 What the Secretary of State says is that, given the difficulties that she faces, it would not be appropriate in this case to order her to provide the accommodation within a specific period of time, but that she should be granted a period of grace during which period she will "move heaven and earth" to find the accommodation.
- 10 In the circumstances of this matter, I do not consider it appropriate to provide a further "period of grace" for the Secretary of State to find the appropriate accommodation. Matters have now got to a stage where the court needs to intervene in order to compel the Secretary of State to fulfil her obligations. In any interim relief application such as this, the court will first consider, pursuant to the *American Cyanamid* test, as adapted for public law purposes, as to whether there is a good arguable case. In this case, there is a strong arguable case and that is not disputed by the Secretary of State.
- 11 The court then considers the circumstances of the matter in order to determine where the balance of convenience lies or, in this case, where the balance of risk of harm lies. In my judgment, it clearly falls in favour of Mr Hyam. He is an adult at risk. His mental health has deteriorated. He is in a precarious and vulnerable situation and, as an adult at risk, the failure to provide him with accommodation, so that he can be released from detention, means that he is being held when he is an individual where neither of the two reasons given in the statutory guidance for continuing to detain are being made out. There is no imminent date for him to be removed and, further, he is not an individual who poses such a high risk of harm to the public that his detention is justifiable. The detention records indicate that he is of medium risk of harm and of low risk of re-offending.
- 12 Given Mr Hyam's precarious mental health and his physical difficulties, it is appropriate to consider what steps the Secretary of State has so far taken to obtain accommodation and whether it is appropriate to allow her the further period of grace that she seeks. The first bail order, made in principle, was made back on 13 January 2021. For the purposes of this hearing (and I make it clear that I am not making any definitive findings), I am accepting the contention of the Secretary of State that Mr Hyam did not take all the steps that he needed to

do in order to establish his own medical position until 24 February 2021. I am not making any findings on that issue, but for the purpose of this hearing I am taking the most favourable position for the Secretary of State and accepting that there was a 6-week delay caused or contributed to by reason of Mr Hyam's inaction.

- 13 It then appears that there was a gap of some three weeks when steps were not being taken by the Secretary of State to find the accommodation when all the information was available. Thereafter, when Serco were instructed to find accommodation within a limited area, some efforts were made on behalf of the Secretary of State to chase Serco over the next few days, but it appears that there was another gap of approximately a week when nothing in particular took place, until 26 March 2021. On the basis of that information, there was a period of at least four weeks when neither heaven nor earth was being moved to find accommodation for this vulnerable adult.
 - 14 In the circumstances, therefore, as I have already indicated in this judgment I am going to make an order that the Secretary of State does now take steps to find this accommodation. I am told that she has widened the search for appropriate accommodation over the last few days to the entirety of the United Kingdom, save for Scotland and Northern Ireland (for COVID restriction reasons), and Eastbourne (because of the restraining order that is in place with respect to this individual). It seems to me that an appropriate period of time would be to say that she is to find that accommodation by close of business, which I will take to be 4 p.m. next Friday, 30 April 2021 which gives her a period of 9 days until by 4 p.m. on 30 April 2021.
 - 15 I do take into account the fact that there are the difficulties that have been outlined, particularly with respect to the need for Probation to approve any such accommodation, the COVID difficulties and the particular difficulties with respect to finding properly-accessible accommodation. Consequently, in order that there is no shadow of a doubt that the Secretary of State can update the court should there be difficulties, I will include in the order that there be liberty to apply to the Secretary of State.
 - 16 I will make the order in those terms.
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CERTIFICATE

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This transcript has been approved by the Judge.