



Neutral Citation Number: [2023] EWHC 1848 (Admin)

Case No: CO/2533/2023

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/07/2023

Before :

MR JUSTICE JULIAN KNOWLES

Between :

**COURT OF FIRST INSTANCE WEST
FLANDERS, BRUGES
BELGIUM**

Appellant

- and -

CAIO MARCHESANI

Respondent

Amanda Bostock (instructed by CPS Extradition Unit) for the Appellant
James Hines KC (instructed by Mishcon de Reya LLP) for the Respondent

Hearing date: **11 July 2023**

APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on 24 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Julian Knowles:

Introduction

1. This is an appeal by the Appellant, a Belgian Judicial Authority, against the grant of conditional bail to the Respondent by a district judge in extradition proceedings at Westminster Magistrates Court on 7 July 2023. This was his third bail application, there having been two unsuccessful earlier ones.

2. The pre-release bail conditions imposed by the district judge were: (a) a residence condition (b) an electronically monitored curfew between 22:00 – 03:00; (c) reporting to a local police station between 08:00 and 18:00 on Mondays, Wednesdays and Fridays; (d) keeping his mobile phone on and charged and to notify the police of any change in number within 24 hours; (e) not to apply for or be in possession of any international travel documents and his passport to be retained by the police; (f) not to leave England and Wales (to be monitored by GPS); (g) to pay a £250,000 pre-release security; (h) for the police to retain his Italian passport; and (i) not to go to any international travel or transport hub.

3. The appeal is brought under s 1(1A) of the Bail (Amendment) Act 1993. This provides:

“Where a magistrates' court grants bail to a person in connection with extradition proceedings, the prosecution may appeal to the High Court against the granting of bail.”

4. On 11 July 2023 I heard from Amanda Bostock of counsel for the Appellant and James Hines KC for the Respondent. I had helpful Skeleton Arguments in advance from both of them, and other material, which I read. I reserved my decision. I have re-read the material in preparing this judgment.

5. It is common ground that the matter is *de novo* before me, and I am not concerned with trying to find an error in the district judge's approach: see s 1(9) and *Tighe v Ireland* [2013] EWHC 3313 (Admin) (although Mr Hines said the Appellant had not identified any). It is for me to reach my own decision based on the evidence and submissions I have read and heard.

Background

6. The Appellant seeks the Respondent's extradition. The extradition arrest warrant is based on a domestic warrant *in absentia*, issued by Johan Desseyn, examining magistrate at the Court of First Instance West Flanders, Bruges Division, on 15 May 2023. It is an accusation warrant. That means there is a presumption in favour of bail and it is for the Appellant to show that no conditions can be imposed which will ensure that the Respondent surrenders as appropriate. The Appellant maintains its opposition to bail on the basis that he will fail to surrender.

7. The offence alleged arises out of the importation of large quantities of cocaine into the Netherlands and Belgium in particular by an organised criminal gang and the laundering of the proceeds. Hundreds of kilograms were detected and seized in containers in Rotterdam in

2020. The estimated profit from successful imports is estimated to run into the hundreds of millions of euros.

8. Box (e) of the warrant goes on to set out the Respondent's alleged role in the organised group responsible for the importation:

"The analysis of encrypted communication that appears to be attributable to Flor BRESSERS and Bastiaan KORNER shows that funds belonging to Flor BRESSERS are being converted into crypto currency.

Further investigation has revealed that Flor BRESSERS and Bastiaan KORNER are believed to have had cash funds converted into bitcoin using an address, which is part of a cluster where the bitcoins were sent to 14 accounts at the exchanger BINANCE.

A query at BINANCE revealed that these 14 accounts are or were managed by Caio MARCHESANI (22/04/1985).

The analysis of SKY-ECC communication from the user "TIEPOS" shows that he is the administrator of these accounts. TIEPOS forwarded a photo of a flat where he was present at the time on 21 June 2020.

It appeared that the flat in question was located at London SW11 8BF, 3 Riverlight Quay, 12th floor, flat 200. It was further learned that this flat was rented at least from 6 January 2021 to 3 July 2022 by Caio MARCHESANI and that when he rented it, he had given the email address [...], among others. This email address was also used with one of the Binance accounts managed by Caio MARCHESANI.

The user of the pin TIEPOS appears to be the same person as the user of the moniker "Greysmith" on the Encrochat platform.

Communication from TIEPOS show that he appears to charge commissions of up to 9% for transferring cash funds.

On top of that, "Greysmith" says in messages dated May 21, 2020 to "Lucrativeherb", a moniker attributed to Sergio DE CARVALHO, that he has rented a flat to keep the cash, he has a guy to guard it 24 hours a day and that the only risk is when the police are around.

The mere fact that Caio MARCHESANI seems to receive very large cash sums, physically keep them and have them guarded at private addresses and trade them at commissions, which are multiples of the usual rates in the financial sector for international payments and transfers, makes it plausible that he seems to be aware of the criminal origin of these funds.

In a message dated 14 April 2020 at 17.36, "Greysmith" says to "Lucrativeherb"" in the context of a conversation about cash funds to be raised in London : " the crime may not stop, friend".

On 6 May 2020 at 5.54pm "Greysmith" sends to "Lucrativeherb " " Friend, this ted 60 is for crime or normal?" to which "Lucrativeherb" replies on 6 May 2020 at 6.22pm : "Normal. Everything is criminal.""

9. According to Ms Bostock's Skeleton Argument (at [4]), the alleged traffickers have links to a number of other jurisdictions including Brazil, Hungary, the Czech Republic, and France.

10. The offence specified on the warrant is being 'knowingly and intentionally ... involved in a criminal organisation', contrary to Articles 324a and 324b(1) and (3) of the Criminal Code. The box 'participation in a criminal organisation' has been crossed. The maximum sentence in the Respondent's case is five years' imprisonment.

11. Mr Hines submitted, on the basis of a statement from the Respondent's Belgian defence lawyer, Christophe Marchand, that if he received the maximum sentence available to the court on conviction, he would be eligible for provisional or conditional release after serving one-third of five years, ie, 20 months. As I indicated at the hearing, I do not consider that I am in a position to speculate about the likely Belgian sentence. Because he is the Respondent's lawyer, Mr Marchand is not an expert. The most that can be said is that the maximum sentence in the Respondent's case – at least on the charge he currently faces - is five years imprisonment, and others who have been arrested are facing much longer maximum sentences, in some cases up to 15 years. Mr Marchand says this means that the investigating judge must regard the Respondent as having been at a low level in the criminal organisation.

12. The Appellant was arrested on arrival at Heathrow Airport from the UAE on 17 May 2023.

13. An extradition hearing has been fixed for 22 August 2023 for half a day. However, Mr Hines told me that this date is likely not be effective because of lack of time, and in fact the hearing is likely to be not before the autumn. Expert evidence on s 12A of the Extradition Act 2003 (decision to charge/try) is to be called. An application to adjourn was refused by the district judge on 7 July 2023, but without prejudice to the possibility of a further application being made.

Submissions

The Appellant's position

14. Ms Bostock's base position is that no bail conditions can be imposed to secure the Respondent's attendance and the flight risk he poses cannot be surmounted.

15. She accepted that he has no previous convictions, and that he studied here at university between 2008 and 2013 (and I was shown evidence to that effect in the bundle by Mr Hines). He has indefinite leave to remain. She also accepted that there is evidence that he holds

senior positions in two English companies (he is the CEO of a company called TF Pay and the CFO of Acai Berry Foods Limited). He provided seed capital for the latter and is 50% shareholder in its ultimate holding company. He became a director in 2022. According to its founder, Marcus Carmo, in 2021-22 its turnover was £4.5 million and it has expansion plans this year. Mr Carmo has made a helpful witness statement explaining *inter alia* the Acai business and the Respondent's role within it.

16. As against this, Ms Bostock made the following points in opposition to the grant of bail: (a) the Respondent is an Italian national with international links, including in the UAE where he has an address, and from which extradition is difficult; (b) it is not known how long he planned to be in the UK when he was arrested; (c) he is alleged to be part of a well-resourced group which has been involved in major smuggling, which could assist him to leave the UK; (d) he does not have firm links with the UK, no dependents, and no known or permanent residence in the UK and rents property on short term rentals; (e) his links to the two companies are comparatively recent and do not really tie him to the UK – ‘he could be CFO anywhere’, as she put it; (f) his alleged offending was on a huge scale involving large sums of money, and sophisticated; (g) the money to be put up by way of security by the Respondent might be tainted; (h) the evidence shows he is wealthy and well-resourced – a ‘cold wallet’ (a type of crypto storage device) was seized and contained over £1.5 million (it has now been frozen); (i) he will not want to be convicted – even if he only serves 20 months – as it would destroy his business credentials and would likely cause him to lose a substantial amount of money (through confiscation).

17. So, said Ms Bostock, in circumstances such as these the Respondent is a substantial flight risk that cannot be managed even with stringent conditions. As such, she invited me to remand him into custody to avoid him absconding.

The Respondent's position

18. On behalf of the Respondent, Mr Hines submitted this was a case where I could properly admit the Respondent to bail on the stringent conditions imposed by the district judge.

19. Mr Hines made a number of criticisms of the Appellant's approach and said that a number of points that it now relied upon, eg, the Respondent's ties to the UAE; his allegedly loose ties to the UK; question marks over the source of the security money; and allegedly hidden wealth; had come rather late in the day (‘... a regrettable change of approach ...’) (Skeleton Argument, [7]). He also said there were errors in the Appellant's grounds of appeal (drafted on 7 July 2023 immediately after bail was granted). As to the provenance of the money, this had been fully explained by Mr Carmo. The money comes from Acai company funds with his authorisation and consent. I have paid particular attention to Mr Carmo's statement, as Mr Hines asked me to, and as I said I would. I entirely accept what is said in it, and that the Respondent plays a full part in the Acai business (and the other business of which he is CEO). I was shown photographs in the bundle which demonstrate that Acai is a viable thriving business focussed on healthy eating in a café setting. I broadly accept his business interests are, as Mr Hines said, a ‘powerful motivation to remain in England and contribute to the growth of his companies’ (Skeleton Argument [13(e)]).

20. In his sustained and well-argued submissions, Mr Hines said that the Respondent has demonstrably strong ties in this jurisdiction; he is a director of an FCA regulated business,

and he emphasised that the Respondent will contest the extradition proceedings in this jurisdiction and engage with Belgium. There is no evidence he is a fugitive. All the crypto wallets have been frozen. Mr Hines emphasised that the Respondent has ties to the UK going back to 2008 when he began his studies here. He is of good character. Mr Hines emphasised the length of time the proceedings here are likely to take (and also in Belgium) and made submissions on the likely sentence even were the Respondent to be convicted (a point I have dealt with). He said the Respondent was plainly regarded as having had a minor role in Belgium. Mr Hines took me through the proposed conditions and said they plainly would guard against any realistic flight risk.

21. Mr Hines made a number of other points in writing in his Skeleton Argument. I do not think that it is necessary for me to rehearse them. I have had regard to them. It is worth mentioning, though, that Mr Hines stressed that the Respondent is not accused of drug smuggling and that this is clear from the arrest warrant. He said that 'laundering the proceeds of crime' had not even been crossed on the warrant. I am not sure this is a terribly good point. The Respondent is effectively accused of being a member of a conspiracy, whatever his own precise role, albeit the maximum sentence is comparatively modest (certainly compared to the likely sentence in this country for comparable offending).

Discussion

22. I have not found this an easy decision. There are good points to be made on both sides, and the matter is finely balanced. However, I have come to the reluctant conclusion that this is not a case where I can properly admit the Respondent to bail. The appeal is therefore allowed and the Respondent will remain in custody. My reasons are as follows.

23. The starting point is that the Respondent is accused of involvement in a criminal gang responsible for importing, in a sophisticated way, tons of cocaine and making hundreds of millions of euros of profit. If the prosecution's case is correct, it is able to avoid border controls. Whilst not charged as such, the Respondent is effectively accused of conduct amounting to laundering the proceeds through bank accounts under his control in a sophisticated way using cryptocurrency.

24. I cannot be sure about what funds or bank accounts he has access to (there is, as yet, no proof of evidence from him). I accept that some accounts have been frozen but there may be others; I just do not know. He appears to make a substantial living from his legitimate businesses, and I think it is a fair description to say that he is well-resourced. I consider it a real possibility he has or would have the financial and organisational resources to abscond abroad if he chose to do so.

25. There is also the question of his international connections. Unlike many extradition defendants, there are other jurisdictions where he could go and live on a permanent basis, including Italy and the UAE. Securing extradition from the latter, in particular, could be problematical.

26. I do not regard his connections with the UK as being overwhelmingly strong. They really just amount to his business interests here, and I think Ms Bostock was right to observe that he could conduct his business from many places in the world.

27. The extradition hearing is currently fixed for 22 August, which is now just over a month away. I cannot speculate whether that date will drift.

28. I accept on the basis of Mr Carmo's evidence that concerns about the source of the security money have now dissipated.

29. Finally, on the question of sentence, I accept that at present the maximum sentence is fairly low. But there are several points which occur to me. First, the consequences for the Respondent of conviction would be severe, even leaving aside a prison sentence. It would, for example, no doubt have repercussions for his FCA regulated business and might impact on his future ability to act as a company director. Second, there is the possibility that further investigation in Belgium might reveal more evidence against him, so as to make the case against him more serious. (Mr Marchand says that the investigation is still ongoing by the investigating judge). I accept there is an element of speculation in my saying this, but such things can happen. Third, as I have already said, there must be a possibility of confiscation or forfeiture if he is convicted.

30. For these reasons, and those advanced by Ms Bostock which they mirror, I consider the risk that the Respondent would abscond to be too high to enable him to be admitted to conditional bail, on whatever conditions.