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IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

[2019] EWHC 3651 (Admin)



No. CO/1516/2019

Royal Courts of Justice

Tuesday, 16 April 2019

Before:

MRS JUSTICE ELISABETH LAING

B E T W E E N :

CEBULA

Applicant

- and -

NATION

Respondent

MS K. MUSTARD (instructed by McMillan Williams) appeared on behalf of the Applicant.

MR S. HYMAN (instructed by CPS Extradition Unit) appeared on behalf of the Respondent.

J U D G M E N T

MRS JUSTICE ELISABETH LAING:

- 1 This is a renewed application for bail by the requested person (“the applicant”). Bail was refused by District Judge McGulver(?) (“the DJ”) on 27 March 2017. This is not an appeal but a fresh application, see s.22(1A) of the Criminal Justice Act 1967. As Mr Hyman, who represents the judicial authority, points out in his skeleton argument, s.4(2B) of the Bail Act 1976 displaces the statutory presumption in favour of bail when a requested person has been convicted of an offence for which a European Arrest Warrant (“EAW”) has been issued.
- 2 Pursuant to para.2 of Schedule 1 to the Bail Act 1976, a requested person need not be granted bail if the court is satisfied that there are substantial grounds for believing that the requested person, if released on bail (whether subject to conditions or not), would fail to surrender to custody.
- 3 The position is that a different district judge ordered the applicant’s extradition to Poland in a decision handed down on 27 March 2019. The history is that the applicant was arrested on 30 January 2019 at his home address. He was produced at Westminster Magistrates’ Court on 30 January 2019. He did not consent to his extradition and the extradition hearing was opened. The grounds that he raised against his extradition were his Art.8 rights. At that stage, the judicial authority did not oppose bail but required that conditions be attached to the grant of bail.
- 4 Bail was therefore granted by District Judge Goldspring subject to seven conditions:
 - 1) Residence at his home address.
 - 2) A security in the sum of £500.
 - 3) Regular signing on at a police station.
 - 4) Surrender of passport.
 - 5) Prohibition of possession of international travel documents.
 - 6) Prohibition of attendance at ports, airports and international railway stations.
 - 7) The number of the applicant’s mobile phone should be notified to the authorities.
- 5 The applicant was remanded in custody until the security was lodged at court. On 7 February he appeared in court again. He was not represented. The security had not been lodged. The case was adjourned until 14 February. He appeared again on 14 February. He was again not represented. The security had again not been lodged. The District Judge who presided the hearing told him that the money must be lodged before he could be released pursuant to the grant of bail. The applicant said that he had not been able to make contact with his partner. The case was adjourned. The security was lodged later that day. The applicant was then released.
- 6 The extradition hearing was on 8 March before District Judge Blake. The applicant was again not represented. The judicial authority conceded that one of the two convictions for which the applicant’s extradition was sought was not an extradition offence within the meaning of s.10(3) and s.65 of the Extradition Act 2003. The judicial authority therefore invited the District Judge to discharge the applicant in respect of that offence. The applicant gave evidence in support of his Art.8 case. The hearing was adjourned until 21 March for the District Judge to produce a written judgment. The applicant failed to surrender on 21 March. He told his solicitor that he had not been able to go to the hearing because he could not afford the rail fare of £105.

- 7 The judicial authority's case is that he said that the applicant would be able to come the following week since he would be paid that weekend. The hearing was then adjourned until 25 March. I asked Ms Mustard, who represented the applicant, whether she accepted that that was so. She was not able to say because those instructing her were not acting for the applicant at the time.
- 8 On 25 March the applicant failed to surrender. District Judge Griffiths then issued a warrant not backed for bail for the arrest of the applicant. Ms Mustard tells me that, at the hearing on 21 March, District Judge Blake had accepted the applicant's explanation for not attending and that that was why he did not issue a warrant for the request of the applicant.
- 9 On 27 March the applicant was brought before the appropriate judge. A charge under s.6 of the Bail Act 1976 was put to him and he pleaded guilty. He was then sentenced to seven days' imprisonment in respect of that offence. The judgment of District Judge Blake was handed down. District Judge Blake ordered the applicant's extradition in respect of the fraud offence.
- 10 The District Judge found that the applicant had failed to keep in touch with the judicial authority as required and to keep them informed of his address. The District Judge did not believe the applicant's evidence that he did not know that he was required to report to prison at some point to serve his sentence. The District Judge found:
- "I am satisfied that the reason he came to the UK was to try and avoid serving that sentence."
- Ms Mustard points out that Box D of the EAW shows that the judicial authority accepted that the applicant "did not receive" service of the process documents. That leads her to submit that he should not be considered a "classic fugitive".
- 11 The judicial authority submits that the presumption in favour of bail has been displaced by the conviction for which the applicant's extradition is sought. The judicial authority further submits that there are substantial grounds for believing that he would fail to surrender. The judicial authority relies on the finding by the District Judge that the applicant came to the United Kingdom to avoid serving his sentence and further relies on the applicant's failure to surrender to the appropriate judge in these proceedings on two occasions. Moreover, it is submitted that the applicant conceded liability for at least one of those failures by pleading guilty to the Bail Act offence.
- 12 Ms Mustard submits that the court should take into account the question of proportionality when deciding whether or not to grant or withhold bail because it is important that detention pending extradition does not become excessive. It is submitted that one of the amended grounds of appeal concerns whether or not the sentence which remains to be served, the sentence of six months' imprisonment, can be disaggregated as between the two offences for which the applicant's offence was originally sought and that if permission to appeal is granted an inquiry of the judicial authority will follow, and the case will have to be adjourned.
- 13 In that connection, Mr Hyman has read to me a response to a request for further information from the judicial authority which concerns this issue. It is not clear in its effect. Ms Mustard submits that the applicant has already spent 34 days in custody and if seven days is subtracted for the sentence passed in respect the Bail Act offence that is still a period of 27 days in custody.
- 14 The further information, unclear though it is, does suggest that a sentence of six months' imprisonment was imposed for the offence of fraud. So it is not entirely clear that the sentence which remains to be served will be less than six months. The issue rather, it seems

to me, is whether the sentences which were imposed for the two offences jointly can properly, according to Polish law, be disaggregated; a question on which I express no view.

- 15 In the light of that, it is submitted that if there is a further inquiry that will cause delay in the appeal process and lead to the applicant being in custody for a longer period pending his appeal. Ms Mustard accepts that the applicant failed to surrender on two occasions but that, on the first occasion, the explanation which he proffered for not surrendering was accepted, but she does accept, as she must, that on the second occasion he pleaded guilty to a Bail Act offence.
- 16 In my judgment, Mr Hyman is right to submit that the presumption in favour of bail has been displaced by the Polish offence. I am also satisfied that there are substantial grounds for believing that the applicant, if released on bail, would fail to surrender to custody. Whether or not he had a good excuse for not surrendering on the first occasion, it is undoubtedly the case, as his plea of guilty shows, that he accepted that he did not have a good excuse for failing to attend on the second occasion. In addition, qualified as it might be by the text in the EAW to which Ms Mustard drew my attention, there is the District Judge's finding that the applicant came to the United Kingdom to avoid serving his prison sentence.
- 17 I take into account that bail was granted initially but there being two important changes of circumstances since the initial grant of bail: firstly, the failure to surrender to which the applicant pleaded guilty and, secondly, the fact that his extradition has been ordered. If permission to appeal is granted, and that will necessitate further enquiries which may lead to a period of further custody that may become disproportionate, it would be always open to the applicant to rely on that change of circumstances and to renew this application for bail. But as things stand today, I refuse this application.
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CERTIFICATE

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This transcript has been approved by the Judge