Neutral Citation Number: [2020] EWHC 1424 (Admin)

Case No: CO/32/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 June 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

SANDER PAJUMAGI	**Applicant**
- and -	
TARTU COUNTY COURT, VILJANDI COURTHOUSE, ESTONIA	**Respondent**

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Stephen Fidler for the **appellant**
Adam Payter for the **respondent**

Hearing date: 3 June 2020

Judgment as delivered in open court at the hearing

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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.

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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, pursuant to section 22(1A) of the Criminal Justice Act 1967, in circumstances where the magistrates court has previously withheld bail in extradition proceedings. As Stewart J explained in Tighe [2013] EWHC 3313 (Admin) at paragraph 5, my jurisdiction, although sometimes described as an appeal, involves looking at the matter "afresh". This has been a telephone conference hearing. It was listed in the cause list with contact details available to anyone who wished to dial in. I heard oral submissions just as I would have done had we all been sitting in the court room. I am satisfied that this constituted a hearing in open court, that the open justice principle has been secured, that no party has been prejudiced, and that in so far as there has been any restriction on a right or interest it is justified as necessary and proportionate.

2. The applicant's extradition to Estonia was ordered by the district judge on 30 December 2019 for reasons given in a judgment dated 13 December 2019. Permission to appeal against that ruling was refused after an oral hearing by this court on 26 March 2020. The European Arrest Warrant that is the basis of the extradition action is a conviction warrant. It relates to a custodial sentence the unserved portion of which is 20 months and 20 days. The applicant has been on remand since his arrest on 11 October 2019, that is to say for nearly 8 months. Bail has previously been refused in this case on 3 occasions: 15 October 2019, 23 October 2019 and 6 April 2020. Most recently, an attempt to make a further application for bail was not entertained by decision of 11 May 2020, on the basis that that judge was not satisfied that there was any change of circumstances justifying a further consideration. As I have said, my role involves looking at the question of bail afresh and that is what I have done.

3. The basis of the application for bail comes to this. Mr Fidler on behalf of the applicant submits that, but for the suspension of flights arising from the Covid 19 pandemic, the applicant would by now be in Estonia. In Estonia he would be able to apply for parole under paragraph 76 of the criminal code which I have been shown. That provision of the Code, on the face of it, explains that there is an entitlement to apply for parole once at least one-third of the custodial sentence and at least 4 months have been served, as on the face of it would be the position in this case. Mr Fidler accepts that that entitlement to apply on the face of it then gives rise to a discretion as to whether or not parole is granted, and as to any conditions. There is a provision of paragraph 76 which describes mandatory considerations for the Estonian court to consider in addressing the issue of parole. Mr Fidler says that the delay in removal to Estonia is no fault of the applicant's. There are no flights at present and there is no imminent prospect of a flight. His client is not entitled to make any application to the Estonian court from within the United Kingdom. In the circumstances of this case there is therefore prejudice arising, which it is appropriate for this court to address using the bail jurisdiction. In addition, Mr Fidler submits that appropriate conditions are offered in this case which can appropriately allay any concern which this court has as to failure to surrender. They include a condition that the applicant live with a friend at an address in SE1. They include a curfew electronically monitored, in respect of which Mr Fidler points to the parallel between that and action which could be taken under paragraph 76 of the Code by the Estonian court. Also, a security of £1000, and various other familiar conditions relating to the retention of identity documents and restrictions regarding travel.

4. As I see it, the case for bail is really put in two different ways. One is that this is a case where there are no substantial grounds for believing that the applicant would, if released on these conditions, fail to surrender. But the other is that, even putting to one side that question, the prejudice means there is an injustice, in relation to which the applicant is blameless, which it is appropriate for this court to address using bail and bail conditions.

5. Bail is opposed by the respondent. Mr Payter submits that, notwithstanding the offered conditions, there are here substantial grounds for believing that the applicant would if released failed to surrender. He submits that the position relating to parole in Estonia does not support the grant of bail, either in so far as it factors into the assessment of failure to surrender, or on any stand-alone basis. He emphasises that the parole decision is one for the Estonian court, and is a discretion having regard to all the circumstances, including in this case past non-compliance; and that there is on the face of it no guarantee that an application in Estonia for parole would be granted. That, as I have explained, was the basis of the argument relating to blamelessness and prejudice.

6. My assessment is this. In my judgment there are substantial grounds for believing that the applicant, if released on the conditions, would fail to surrender to custody. In the light of that assessment, I would not be prepared to grant bail in any event, notwithstanding the stand-alone argument relating to blamelessness and the inability as things stand to apply for parole.

7. Even if, however, the substantial grounds were not regarded as fatal and there were to be seen as some self-standing basis for bail arising out of blamelessness and prejudice and the inability to apply for parole, I would still refuse bail in this case. In my judgment, it is not and cannot be a sufficient answer to say that there is prejudice and the applicant is awaiting the opportunity to invoke his entitlement to apply in Estonia for parole. It is possible that prejudice of that kind, at least in a case where the court is persuaded as to blamelessness, might be a basis for this court to exercise its jurisdiction, but in my judgment it would need to be a very exceptional and very clear-cut case. If, for example, I felt satisfied in all the circumstances that it was inevitable – or all but inevitable – that a parole application would succeed in Estonia , then I can see the force of this court considering addressing the prejudice and injustice arising, by reference to the bail jurisdiction. But in the present case, in my judgment, there is nothing of that kind. The question of parole will be one for the Estonian court. It is quite impossible for me to form any assessment as to the prospect of parole being granted by that court in the circumstances of this case. It is therefore impossible to conclude that the applicant is at present the subject of an unjust denial of an entitlement that he would otherwise have. There is no basis for me to second-guess the decision that will need to be taken under paragraph 76 of the Code, still less to seek to replicate it by means of the grant of bail on bail conditions.

8. I am, moreover, not in the slightest persuaded by the submission that this is an individual who is blameless so far as the lapse of time in current circumstances are concerned. This is an individual who opposed extradition and was roundly unsuccessful in the December hearing before the district judge. He then pursued his appeal avenue to this court and was unsuccessful, in that permission to appeal was refused. It is in those circumstances, in a case where moreover he is a fugitive, that he faces the current complications arising from the pandemic.

9. I will now explain my reasons relating to what ultimately is the fatal conclusion in this case, namely substantial grounds for believing that the applicant would fail to surrender. The starting point, in relation to all of the arguments, is that in circumstances where the EAW is a conviction warrant, there is no presumption in favour of the grant of bail.

10. So far as the current position and next steps are concerned, the applicant faces removal, once flights can recommence, together with the consideration of what would be his application for parole. As I have said, all of that has to be set against the fact that he determinedly resisted extradition, putting forward grounds which the district judge held in the judgment to have been "utterly without merit". He is facing what, as I have explained is a discretionary decision in relation to parole, and where it is impossible to say that that application is certain to be granted or anything approaching certain to be granted. He faces those circumstances against the backcloth of what is a substantial unserved custodial term. In all of those circumstances there remains, in my judgment, a strong incentive on his part to avoid the removal.

11. Next, in my judgment, it is highly material that the district judge found as a fact that the applicant is a fugitive. As the judge said in his judgment: "I am satisfied that [the applicant] is a fugitive from Estonian justice. He was fully aware of his obligations under the sentence imposed. He failed to comply with the requirements of his sentence. He clearly knew the inevitable consequences of that. He fled Estonia within two months of the court ordering the enforcement of his custodial sentence. He failed to report to prison as required". All of that is clearly highly material to an assessment of whether there are substantial grounds to believe that he would now fail to surrender.

12. The picture is even stronger when I look at the background. The applicant's October 2017 offending was itself criminality which took place while the applicant was disqualified, and it constituted a breach of a suspended sentence order. In each case that constituted action in defiance of orders of a court, imposed just four months earlier in June 2017. In addition, the applicant's response to community service terms, also imposed by orders of the Estonian courts, was a clear record of significant non-compliance. The district judge recorded in his judgment that the applicant only completed 38 hours of 658 hours of unpaid work, in a period of some 13 months. These are the sorts of matters, no doubt together with the action of coming to the United Kingdom as a fugitive, that would all be relevant to the question of parole and the discretion in all the circumstances. They therefore inform and reinforce the conclusion I have reached about whether I can say that there is a current injustice. But they are also matters plainly relevant to my assessment as to the question of the applicant and his attitude to compliance and whether he could be trusted to comply with conditions imposed today by me.

13. Finally, the applicant has been in the United Kingdom only since October 2018. He has no family here and owns no home here.

14. For those reasons, and in all those circumstances, I arrived at what I described as the fatal finding that there are substantial grounds for believing that he would if released fail to surrender and I am not satisfied that that risk can be sufficiently ameliorated by the conditions that have been put forward. I said my function was one of considering bail afresh, that that is what I would do and that that is what I have done. But I conclude by repeating that three different district judge on 15 October 2019, 23 October 2019 and 6 April 2020 concluded that this was not a case where it was appropriate to grant

bail in the circumstances as they were before those judges on those occasions. I have reached the same conclusion, on the circumstances as they are before me on this occasion. For those reasons the application is refused.

3 June 2020