Neutral Citation Number: [2020] EWHC 1446 (Admin)

Case No: CO/1958/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 June 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

YOUSSEF AMAJANE (aka ADAM MANSORI)	**Applicant**
- and -	
AMTSGERICHT TIERGARTEN, FEDERAL REPUBLIC OF GERMANY	**Respondent**

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Louisa Collins for the **Applicant**
Stefan Hyman for the **Respondent**

Hearing date: 4 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 Skype conference hearing. It and its start time were listed in the cause list, with email contact details usable by any person who wished to observe this hearing. 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 is 26 and comes from Morocco. He was previously in Germany, where he used the name Adam Mansori and date of birth of 3 January 1998. He is wanted for extradition to Germany, pursuant to a replacement accusation EAW issued in February of this year, specifically 25 February 2020. That replaced a much older EAW issued on 5 October 2016, which was vitiated by the absence of a qualifying 'issuing judicial authority' under the relevant legal principles. A German national arrest warrant has been upheld on 23 March 2020, in the face of an application to set it aside.

3. The central issue, on the face of it, in the German criminal proceedings is one of identification. A serious assault was captured on CCTV. The applicant denies that he is the perpetrator. The incident is described as attracting one of two sentencing bands: the first custody between 6 months and 10 years; the second, if regarded as a less serious case, custody between 3 months and 5 years. I have to say it is not clear before me which of those two bands is being said by the respondent on the evidence to be the appropriate one. All I can do is approach the case on the basis that it may be one and it may be the other. The description of the offence concerns an attempted distraction theft from an individual at a Berlin train station where the perpetrator, said to have been the applicant, was pushed away and punched the victim in the face and there was then an assault which followed when the victim lay on the ground. The perpetrator kicked him several times with full force using a 'shoed foot', after taking a run up, against the head and in the face. The victim sustained lacerations on the face and an orbital fracture in multiple nasal bone fracture which required surgery.

4. The extradition hearing before the district judge is due to take place on 2 July 2020. Ms Collins rightly reminds me that in the current circumstances, particularly in cases where credibility may be significant, it cannot be taken for granted that it will take place on 2 July 2020. It has already been deferred once. The applicant has been in custody since his re-arrest on 11 March 2020. He had previously been arrested in conjunction with the earlier EAW on 23 February 2020 but was released the following day. Everybody recognises that he understood that he faced the prospect of re-arrest. He has therefore been in custody since 11 March. Two different district judges have refused him bail, on 11 March 2020 and 18 March 2020. A subsequent attempt was rejected when a bail application was not entertained, on 14 May 2020. The district judge dealing with that was not satisfied that there was a sufficient material change of circumstances.

5. The case for bail really comes to this. The applicant is a young man who has been in the United Kingdom since early 2016. He has no previous convictions here in the UK

nor any record of non-compliance or absconding. There are no international antecedents and Mr Hyman informed me, in fairness to the applicant, that a request was made and had there been any they could have been put before the court. Importantly, it is an accusation warrant which means that there is a presumption in favour of the grant of bail. Furthermore, the applicant is not a fugitive, it having been confirmed and accepted by Mr Hyman that he was never arrested or questioned in Germany in relation to the relevant incident. On the evidence, he gave the police the address at which he was then re-arrested. He gave that address when he was arrested for the first time. He had two weeks then in which he could have left had he wished to do so. When he was re-arrested he disclosed his true identity, recognising that the description up to then of Adam Mansori had been an alias, and the date of birth making him appear much younger had been incorrect. He also said that he had a Moroccan passport in his true name which he then surrendered. The circumstances relating to the re-arrest have played a significant part on all hearings in relation to bail, as they will do today. As to that the applicant's case is that he has now explained how it was that he tried to hide in a shed behind the property when the police arrived to re-arrest him. There is a proof of evidence from him that says he panicked when he saw people in the house and in his bedroom; that he did not know who they were; that he was not trying to escape. The submission made is that this was 'not a meaningful attempt to abscond'. Conditions are put forward which are said to be amply sufficient, and in any event sufficient, to allay any concerns that do arise in this case. They include a pre-released security which was £4,000 as at 27 May 2020 when Counsel's submissions were filed and is now £6,000, which I accept is a significant sum for the applicant and those who support him to be able to have collected. The other conditions include a curfew with electronic monitoring and a residence condition, the usual passport retention reporting to a police station and restrictions that would serve to impede travel together with a condition of having a mobile phone always switched-on. Emphasis is also placed on the fact that the applicant has everything to fight for with his hearing coming up, and that steps are being taken to engage the German authorities and also at the UK end, to seek to address matters and resolve the disputed question of identity, to the satisfaction of the German authorities.

6. Bail is resisted in this case on the basis that there are substantial grounds to consider that the applicant will, if released and notwithstanding the conditions, fail to surrender.

7. The starting point is that there is a presumption in favour of the grant of bail in circumstances where this is an accusation warrant. My assessment, looking at the matter afresh and on the evidence before me, is that I consider that there are substantial grounds to believe that the applicant would fail to surrender, if released notwithstanding the conditions. In my assessment, the presumption in his favour is displaced, on the evidence before me, doing my best in the light of that evidence to assess the risks as they currently stand.

8. The first point is there is the prospect of a substantial period of custody were the applicant to be convicted by the German Court.

9. I accept the force of the point that, given that everyone was aware that it was on the cards that he would be rearrested when he was released on 24 February 2020, in circumstances where at that stage he had been dealt with as Adam Mansori, the applicant did not within the 14 days thereafter take steps to leave the United Kingdom or for that matter leave his address. That address was known to the police and the applicant knew that, because he had given it. Moreover, he had his Moroccan passport

and his partner was already in Spain. He did not leave. However, I am troubled, and indeed very troubled, as have other judges been, by the circumstances relating to the re-arrest. The applicant did 'try to hide', which he accepts. He says he was not seeking to 'escape' from the people who arrived, and he says that they were people 'in plain clothes' and he 'didn't know who they were'. But he does not say what he was trying to do, by 'hiding' from them so that they would go away thinking that he was not around. Nor does he say what he had in mind to do were he successful. Nor does he say who he thought they were, if they weren't the authorities coming back, as everybody recognises was on the cards. I have considerable concerns about those circumstances and what happened, on the evidence before me.

10. The applicant and his brother knew all about the extradition proceedings in which he had been arrested and was being dealt with as Adam Mansori. They lived together, within the same house. The brother has put in a witness statement that specifically refers to the extradition action that had been taken in February and what his brother had been informed about the prospect of re-arrest. It is in that context that I have to consider the evidence before me of the actions of the brother. The brother says in a witness statement that when the police arrived and said they were looking for 'Adam' he told them he 'did not know who they were referring to'. But we know that Adam was the name used by his brother in Germany, and the name that was used in the extradition proceedings. I also have a contemporaneous witness statement from the police officer who attended and made his statement on the same day, 11 March 2020. That evidence tells me, very clearly, that the brother "said he was home alone". That is not dealt with by the brother in the witness statement that he has put in. I have to accept, and I do accept, that that is what the officer was told by the brother on that occasion. On the face of it, it is clear that that was an untruth. Indeed, the applicant himself in his proof of evidence explains "I was at home" and he says "my brother was also at home". That indicates that, when confronted by the authorities seeking to pursue the extradition re-arrest, and in circumstances where everybody knew that that was on the cards, the brother made the decision when encountered by the police to tell them untruthfully that he was "at home alone", when in fact his brother was there at home at the same time.

11. This, on the face of it, is a troubling set of circumstances where I have to consider the risks that, if released and notwithstanding conditions, the applicant would fail to surrender. I have already explained the conclusion to which I have come about that. But there are also other aspects of the evidence relating to that, in my judgment important, set of circumstances. They include the fact that the police officer records that he saw another figure through the opaque window and was told by the brother that that was him and that he had been to the toilet (his evidence is that when the police arrived at the door the first thing he did was to go to the toilet and the second thing he did was to answer the door). The police evidence also records having heard a door and the follow-up actions of the police then involved finding the applicant round the back of the property, hiding in a shed (the applicant protests that he was already outside because he was exercising).

12. I put both counsel that I am not in a position, for the purposes of this bail application, to make concrete findings of fact. What I do have to do, though, is to consider the question of risk and do so against the evidence that is before the court. I do so, bearing in mind the presumption in favour of bail to which I have referred.

13. I am not going to grant bail for the reasons that I have explained, but I do think it right to say this. The district judge dealing with the next hearing, which is due to take place on 2 July 2020, will be in the position of being a primary fact-finding tribunal. I anticipate that there will be questions about the applicant and his veracity and credibility. I anticipate there will be an opportunity to examine factual matters, relevant to extradition and extradition-related issues. It may very well be that the district judge who has the opportunity to make, and makes, concrete findings of fact will then be in a materially different position to re-evaluate the question of bail. Mr Hyman tells me that the question of bail necessarily will need to be reconsidered at that stage. I emphasise that the factors to which I have just referred, about findings of fact and the district judge, are not an influence on my decision to refuse bail. In other words, I am not refusing bail because there is a fact-finding function – or 'deferring' questions to the district judge – and my conclusion would be the same if that were not the case. What I am saying, in fairness to the applicant, is that – for the record – it would seem to me to be appropriate in this case for reconsideration to be given once concrete factual findings have been made, given that that process exists for that purpose.

14. There are other factors in this case that I mention. They include the fact that, on the evidence, the applicant used at least three aliases while in Germany, with three different dates of birth. They include the fact that there is, on the face of the evidence, in my judgment, no sufficiently strong 'anchor' to the United Kingdom to allay concerns about failing to surrender. I have in mind the evidence of a strong relationship on the threshold of a marriage or civil partnership, which the Home Office has recorded it will not be investigating on grounds of considering that this may not be genuine. There is evidence that that marriage was due to take place in March of this year and evidence that the partner, although from Spain, had himself been in the UK for 2½ years. There is also evidence that they were cohabiting, at the house where the re-arrest took place, although both the applicant and the brother explain that the partner had gone back to Spain temporarily prior to the re-arrest.

15. As I have already said, I have concerns in this case of a nature that mean that I have concluded there are substantial grounds to consider that the applicant would fail to surrender if released today on bail notwithstanding the conditions that have been put forward. Those are not sufficient, in my judgment, to the allay the serious concerns that I have. Those concerns outweigh, so as to rebut and displace, the presumption in favour of bail that arises in the present case. For all those reasons, I have reached the same conclusion as did the previous district judges who considered bail. No doubt they considered the case on the basis of the material as it was before them at the time that the matter was before them. I have considered the matter at the present time and on the basis of all of the material that is before me but, for the reasons I have given, the application for bail is refused.

4 June 2020