

Neutral Citation Number: [2018] EWHC 959 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

Royal Courts of Justice
Wednesday, 4 April 2018

Before:

MR JUSTICE CHOUDHURY

B E T W E E N :

ROMANIAN JUDICIAL AUTHORITY

Appellant

- and -

OPREAN

Respondent

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This transcript has been approved by the Judge

MR A TINSLEY (instructed by the Crown Prosecution Service) appeared on behalf of the
Appellant.

MR S GLEDHILL (instructed by HP Power) appeared on behalf of the Respondent.

J U D G M E N T

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MR JUSTICE CHOUDHURY:

- 1 This is an appeal against the grant of bail to Mr Oprean by District Judge Rose at Westminster Magistrates' Court on 29 March 2018. The Judicial Authority, represented here by Mr Tinsley, claims that the conditions of bail are insufficient and that there remain substantial grounds for believing that Mr Oprean would fail to surrender to custody if released on bail.
- 2 The background to this matter is as follows. Mr Oprean is a Romanian national. In 2014 he was, it appears, residing and working in Romania as a dance teacher. He was convicted that year of an offence committed whilst working as a dance teacher. The circumstances of that offence were that he took advantage of an 11-year-old girl and tried to have sexual intercourse with her. There was apparently digital penetration and rape or an attempted rape as far as one can tell from the description of the offence in the European Arrest Warrant ("EAW"). It also appears that Mr Oprean, according to the EAW, did not acknowledge the deed, trying through his chosen advocate to accredit the idea that the victim was not a virgin, had sex with a friend and ultimately that these relationships were agreed.
- 3 It appears that there was a trial of this matter which was attended by Mr Oprean and that he was convicted of the offence and sentenced to 5 years' imprisonment initially. It then appears that he appealed against that sentence or appealed against his conviction – it is not entirely clear – but at any rate at a further hearing on 25 January 2018 the sentence was increased to 7 years.
- 4 The EAW was issued by a judge of the Romanian courts on 7 March 2018. That was certified by the National Crime Agency on 19 March 2018, and on 29 March 2018 Mr Oprean was arrested in Harrow and taken to Harrow police station.
- 5 At the conclusion of the custody process he was taken to Westminster Magistrates' Court. There he applied for bail pending his extradition hearing which has now been set for 10 May 2018. Bail was opposed, however DJ Rose granted bail on certain conditions. These were that: there would be security of £2,000 to be payable pre-release; he would surrender his passport, although that does not appear in the current list of conditions; he would be subject to electronic curfew between midnight and 6 a.m. daily; he would be required to keep his mobile phone fully charged and on at all times; he would be required to report to Harrow police station between 7 p.m. and 9 p.m. daily; he would be required to remain resident at the specified address; and he was not to apply for any international travel documents or hold any.
- 6 The Judicial Authority appealed against the granting of bail. The conditions in respect of such an appeal have been complied with, it seems; therefore, the matter comes on before me within 48 hours, subject to holidays, of the original bail decision. It is submitted by Mr Tinsley that, although the bail conditions are relatively stringent, the significant sentence of 7 years in this case and the relatively weak ties with the UK, and the fact that, on the face of it, the requested person is a fugitive from justice mean, that there is a real risk of absconding and that there are substantial grounds for believing that he would not surrender to custody.

- 7 Mr Gledhill has taken me to a number of documents, which show again, on the face of it, that the requested person was resident in the UK in Harrow in 2016 and was working at that time; that he was also in work at around the time of his trial which is said to be in October 2017; that his wife was also in this country and working; and that there is a stable residence which is subject to a tenancy agreement dated 10 July 2017. Whilst Mr Gledhill very fairly accepts that Mr Oprean must be regarded as a fugitive from justice, he submits that that matter can be mitigated to a very substantive extent by certain factors. These are that there were several opportunities for Mr Oprean to abscond or disappear from the scene, one being shortly after the trial, and another being after realising that his appeal had been unsuccessful. In fact, at that stage, says Mr Gledhill, far from disappearing, Mr Oprean made enquiries through a solicitor in the UK as to whether or not he was subject to a EAW. In those circumstances, and also taking into account the fact that there was co-operation upon arrest, and a willing submission of travel documents, it cannot be said that this is a man who would be likely to abscond were bail to continue with the conditions that have been set by the DJ.
- 8 The question for me is whether there are substantial grounds for believing that Mr Oprean would fail to surrender if released on bail. I note what Mr Gledhill has said in his powerful submissions in favour of bail continuing. However, I am satisfied that there are substantial grounds for believing in this case that Mr Oprean would fail to surrender if released. The factors I have in mind, in particular, are that this is a conviction for a serious offence resulting in quite a substantial sentence of 7 years. Whilst there does appear to have been a degree of co-operation with the Romanian authorities around the time of the trial, it is notable that Mr Oprean decided to leave Romania and return to the UK whilst his appeal was ongoing and without knowing what the outcome of that appeal was. Although there were no express restrictions on Mr Oprean at that time, that still rendered him a fugitive from justice, given that he had left the jurisdiction in which he was convicted. It may be that he believed at the time that his conviction would be overturned or his sentence would be reduced. Matters changed very significantly, in my judgment, as of 25 January 2018 when not only was his conviction confirmed but his sentence was increased to 7 years. Any inference of willingness to co-operate would have to be viewed in the light of that final decision by the Appeal Court in Romania. It does not appear that there are any further appeal steps available to Mr Oprean and that has to be factored into assessing whether or not there would be a reasonable likelihood of further co-operation.
- 9 I do note that there is not a history of offending other than this particular offence and that Mr Oprean has on the face of it appeared to be relatively co-operative. However, as I have said, matters must be viewed in the light of the final sentence imposed by the Romanian court.
- 10 I am also not entirely persuaded that the co-operation or continuing contact with the Romanian authorities has been as consistent or as diligent as may be the case. It is suggested that, having kept contact with the Romanian authorities for some time, Mr Oprean lost contact with his appointed advocate. There is no real explanation as to why that may have occurred or how it may have occurred, and it seems surprising in the circumstances that contact could be lost so easily with a professional representative in Romania. There was an effort, it seems, to find out whether there was a EAW in place, but one cannot read too much into that. There is certainly nothing in the correspondence which suggests that if there was a EAW in place, Mr Oprean was offering to submit to it.
- 11 For those reasons, and bearing in mind of course that the extradition hearing itself is only a short time away, it seems to me that in the circumstances it would be just and proportionate to continue to remand Mr Oprean in custody pending his extradition hearing.

12 For those reasons, the appeal is allowed.

MR TINSLEY: My Lord, thank you.

MR JUSTICE CHOUDHURY: Is there anything else?

MR TINSLEY: No, thank you.

MR JUSTICE CHOUDHURY: Thank you both very much.

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