Neutral Citation Number: [2021] EWHC 1901 (Admin)

Case No: CO/2216/2021

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

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 7th July 2021

Before :

MR JUSTICE FORDHAM

- -

Between :

MONIKA SZILVIA KOCSIS **App**

- and -

DISTRICT COURT OF PECS, HUNGARY **Respo**

- -

- -

Abigail Bright (instructed by JD Spicer Zeb) for the **Applicant**

Georgia Beatty (instructed by CPS) for the **Respondent**

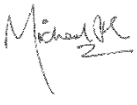
Hearing date: 7.7.21

Judgment as delivered in open court at the hearing

- -

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 in an extradition case, bail having been refused in the magistrates' court. The statutory jurisdiction correctly identified by Ms Bright for the Applicant is section 22(1A) of the Criminal Justice Act 1967. My function involves considering the merits in relation to bail on the materials as they are before me, independently, objectively and afresh. I am not reviewing the most recent magistrates' refusal of bail on 18 June 2021, nor am I reviewing the previous refusal of bail in this Court by Sir Duncan Ouseley on 5 February 2021.

2.
In a number of respects the submissions helpfully made by both Counsel at this bail hearing have necessarily engaged certain issues of fact. An example is the question of fugitivity. Another example is the evidence relating to the pattern of presence in the United Kingdom and abroad of the applicant in recent years. Both Counsel recognise that I am not in a position to make, and should not make, findings of fact on disputed issues, with incomplete evidence and the absence of live evidence and cross-examination. That is perhaps particularly important in relation to issues which in due course will need to be the subject of findings of fact in the magistrates' court. This is not an unfamiliar situation so far as bail is concerned. The submissions made and invitations to this Court are properly made. In the end I have to conduct an evaluation of risk on the basis of all of the materials before the Court. That is what I have done.

3.
The hearing was a remote hearing by MS Teams. I am quite satisfied that that mode of hearing was necessary and appropriate in all the circumstances, and that it involved no prejudice to the interests of any party or person. The open justice principle has been secured. The case and its start time were published in the Court's cause list. So was an email address usable by any member of the press or public who wished to observe this public hearing.

4.
The Applicant is aged 32 and is wanted for extradition to Hungary. That is in conjunction with three arrest warrants issued on 26 October 2020, 14 December 2020 and 3 February 2021. In respect of two of those three warrants Counsel have made submissions on a particular point, raised by Ms Bright, as to whether the absence of a decision to charge, or as it is put not having been "formally charged", constitutes a basis for discharge on those warrants. The relevance of that point for the purposes of today is that it is part of the risk assessment matrix, when considering the prospect of failure to surrender, in the light of how the Applicant perceives or may perceive the alternatives open to her. Those alternatives, if released on bail, would include compliance and resisting extradition through the legal process. But they would also include the option of failing to surrender and seeking to abscond. I have considered the 'charging decision' feature of the resistance of extradition. But, in my judgment, it is not possible for the purposes of bail today, and would not be right, to reach any provisional view as to the strength of the point, still less as to how it is or would be perceived by the Applicant.

5.
The three warrants are each accusation warrants: it follows that there is a presumption in favour of the grant of bail. The objection to bail is on the grounds that there are substantial grounds to consider that, if released on bail and notwithstanding the proposed bail conditions, the Applicant would fail to surrender. The proposed bail conditions involve a pre-release security of £4,000 (an increased sum), a

residence condition requiring the Applicant to stay at the family home, an electronically monitored curfew, together with reporting at the local police station and the usual restrictions in relation to ID documents and international travel and hubs.

6.
This is an anxious case. The Applicant has already been on remand in relation to these extradition proceedings for 6 months. Her final hearing in the magistrates' court is some 3½ months away, on 8 October 2021. A psychiatrist's report, which I have read, records the Applicant's history of depression, a deterioration in her mental health, and a present diagnosis of moderate depression. A psychologist's report, which I have read and passages from which featured in the oral submissions today by Ms Bright, describes the position of the family members and considers the impact of extradition on the Applicant's 15 year old disabled daughter. The report also makes observations as to the relationship between the applicant and the daughter, including during times in the past. It is possible to see from the report what the sources of information for that have been. The daughter has significant physical health needs including cerebral palsy, epilepsy and intellectual disability. She needs significant support with all aspects of daily living attending a special school. There are documented concerns in relation to the daughter, in relation to the Applicant herself, and in relation to the Applicant's mother who is having to undertake a principal caring role – described in Ms Bright's submissions as "temporary carer" – for the disabled daughter. Updated evidence from the Applicant herself tells me that she has nowhere to run to, and that she is desperate to see and be with her daughter. One point made on her behalf is that it is intended that she participate in an updated assessment of the impact of extradition on the daughter, from a setting where they are at home together, so that that assessment can be available to the magistrates' court in the October hearing.

7.
For the purposes of bail I have to focus clearly, and objectively, on the assessment of risk of failing to surrender, in the light of all the material before the Court, and applying the presumption in favour of the grant of bail.

8.
The Applicant has a record of previous criminal offending in the United Kingdom involving 9 convictions and 13 offences. It is pointed out on her behalf: that she has no UK conviction for a period of the last 4 years; that her failure to comply with a requirement of unpaid work was in the context of being a single mum of a disabled child and in the context of mental health difficulties; that in the context of offending in 2016 including breach of a conditional discharge there are documented mental health concerns and references to circumstances of domestic violence; that the pattern of conduct so far as the UK convictions are concerned needs to be put alongside the way in which the judicial authorities in this country dealt with the Applicant, through community orders and variations, and conditional discharge, as an indicator of how blameworthiness and extenuating circumstances were and must have been seen. The previous use of an alias or more than one alias needs, as Ms Bright submits, to be seen against the backcloth where she is known to be an individual completely reliant on an interpreter, where there is a lack of clarity as to dates and circumstances, so that the references to multiple instances may have a benign explanation. One occasion of giving a false name, expressly accepted by the Applicant in her latest statement, is put down to an act of stupidity. As to an offence of failing to surrender, which the Applicant committed aged 25 in October 2013, it is pointed out that the details are not known, that that is a single instance of failing to surrender and thus breaching bail conditions, and that it was more than 7 years ago. On the Applicant's behalf, it is emphasised that she has been released on bail conditions several times in the United Kingdom, on which other occasions

she has been compliant; and that she has never had a custodial sentence here. I have to put all of this alongside the other circumstances of the case.

9.
I accept the submission of Ms Beatty for the purposes of today's bail hearing that, if the Applicant is convicted of the offences of which she is accused in the warrants, there is likely to be a significant custodial penalty. In relation to that, and indeed as to how she may perceive the prospects, it is relevant that on 18 December 2019 she was sentenced in Hungary to a six-month custodial sentence which was suspended. That suspended sentence needs to be put alongside the fact that the multiple offences of burglary or attempted burglary of dwellings, said to have taken place on 7 January 2020, may very well stand – if a conviction ensues – as a breach of that suspended sentence. In the three warrants the Applicant stands accused of criminal offences in Hungary in January 2018, June 2018, a period of several months in 2019 up to 16 June 2019, November 2019, December 2019 and January 2020. She is accused of offences of shoplifting; of a course of conduct of fraud using false information to obtain mobile phones (causing a loss of some £43,000 equivalent); and of several offences of burglary or attempted burglary of dwellings on the single date in January 2020. The prospects of custody if convicted, as I have said, need to be put alongside the previous conviction (leading to the sentence of 18 December 2019): that was a conviction of perjury, fraud, counterfeiting and false document offences.

10.
On the material before the Court the Applicant was questioned on 17 June 2019 by the Hungarian authorities and then left Hungary without reporting the change of address, notwithstanding that she was subject to a condition to do so. Again, following a period of remand which ended on 30 April 2020 she left Hungary – on the documents before the Court – without reporting a change of address, again notwithstanding being subject to a condition requiring her to do so. I repeat: I am not making findings of fact; but I am assessing risk on the material before the Court. When the UK authorities came to arrest her on 7 December 2020, in conjunction with these extradition proceedings, she and her brother tried to escape over the back of the family property and were encountered by the arresting officer in the rear yard next door. Ms Bright invites me not to hold this against the Applicant, on the basis that it was a momentary act involving no settled intention. But in my judgment it is a relevant and important factor in this case, in particular when seen alongside the other facts and circumstances, including the two incidents when, notwithstanding that she was subject to a condition requiring her to notify a change of address and having been questioned and then detained, she chose to leave Hungary and return to the United Kingdom, failing to comply with that requirement. These are all important features of the Applicant's actions. They are recent. They relate directly to the extradition matters, and directly to actions of avoidance.

11.
On the face of it, and looking at the materials objectively, there is a clear basis for concluding from all these matters that there are substantial grounds to believe that if released on bail – and notwithstanding the conditions put forward – the Applicant would fail to surrender. The real question, ultimately, is whether there is an 'anchoring' feature or features, which prevent those concerns from arising, or which allay them. The key 'anchoring' feature in this case, as I see it, concerns the ties between the Applicant and her daughter, and the loving care which the daughter will clearly continue to need, here in the UK, with the support of the family members. What has to be evaluated is the prospect that the Applicant would choose to fail to surrender and would seek to abscond, leaving behind her disabled daughter with the other family members. Linked to this feature are the

circumstances of and the impact, on the daughter, and also on the grandmother in particular – the Applicant's mother – of being left to care for the daughter, in light of what is known and said about the grandmother and her own circumstances. In particular, it can be said that returning to the UK – including in June 2019 and April 2020 – was the Applicant returning to her daughter, whereas failing to surrender now would be running away from her daughter.

12.
I have considered the circumstances and the material before the Court in relation to these potential 'anchoring' features. I have done so in the context of what I have recognised is an anxious case. Having considered all the material before the Court, I cannot accept that the circumstances relating to the daughter, the ties between mother and daughter, the care arrangements and the implications of absconding for those arrangements, provide a sufficiently strong 'anchoring' effect to inhibit the concerns which would otherwise clearly arise.

13.
The pattern of conduct alleged – and I emphasise the word alleged – against the Applicant would reflect her having frequently been abroad, while her daughter has remained in the United Kingdom, looked after by the grandmother and other family members. According to the Respondent – and remembering again that these are accusations – the Applicant was in Hungary on 20 January 2018, 25 June 2018, for a sustained period of months between 4 January 2019 and 16 June 2019 (as to that, she is able to point to a document recording her attending the GP surgery in the UK on 24 January 2019), on 2 May 2019, on 29 November 2019 and on 7 December 2019. On the documents, she was questioned in Hungary on 17 June 2019; and she was on remand in Hungary between 7 January 2020 and 30 April 2020. As regards 2019, the Applicant has accepted: that she was in Hungary in the summer of 2019 and then left; that she was in Hungary again in October 2019; and that she was in Hungary for a further period in December 2019. This is explained by her by reference to visiting family members and their state of health. What is said is that the periods in Hungary were relatively short. Dr Ankers in the psychologist's report records a similar narrative of the Applicant returning to Hungary, on a few occasions, to support family members during serious illness, and only being away for 2 to 3 weeks at a time. There is certainly evidence of the Applicant having been in the UK at various times, when she would have been at the family address, with her daughter and her mother and the others living there. Indeed, there is evidence of her having attended an appointment with her daughter, her mother and her mother's partner on 8 January 2019 (as well as the evidence about the GP surgery on 24 January 2019), near the start of the period of time during which she is alleged to have been undertaking the multiple mobile phone frauds. If I look at the period since 2019, the Applicant was – according to the evidence – remanded in custody in Hungary, as I have said, for the 4 months between 7 January 2020 and 30 April 2020. That means there was in 2020 a period of some 7 months in the United Kingdom with her daughter before her arrest on 7 December 2020, since which she has been on remand. If I look at the position in 2018 the picture based on the documents is that there were again absences from the United Kingdom. One documented example is that a consultant paediatrician, writing as at 26 June 2018, described meeting the Applicant's daughter with the grandfather at the clinic, and recorded being told that the daughter's grandparents and another family member were "her full-time carers". The psychiatrist's report refers to an incident in October 2018, during a period when the Applicant was away from the United Kingdom, described as having been: "a four-month trip to her home country 'to get away from ex'". Ms Beatty drew to my attention a passage in the psychologist's report which records a conversation with the Deputy Head of the daughter's school. It states that the "school recognise grandparents as main carers … and they don't

have contact details for [the Applicant, who] has been to Hungary for long periods and school are often not aware when she is in the UK".

14.
I am considering bail afresh. But I have noted what Sir Duncan Ouseley said when he was considering the bail position on 5 February 2021. He said, according to the helpful and thorough Counsel's note placed before me by Ms Bright: "I am unable to conclude that the Applicant's daughter's needs serve to act as a sufficient tie to this country so as to dispel what are otherwise substantial grounds for believing that the Applicant would … abscond"; and "I am, in the final analysis, not persuaded that the Applicant's tie to her daughter will retain her in this country, so that she answers to lawful custody, as required, in circumstances where the Applicant already present such a high flight risk". Ms Bright invites me for the purposes of today to accept, in relation to the suggestion of significant absences from the UK, as the "best evidence" and as a "complete answer" the reference in the psychologist's report to the daughter as "currently living with her maternal grandparents whom she has lived with, together with her mother, for much of her life". There is an element of ambiguity, in my judgment, about the description – temporally – of the mother's presence. But what for the purposes of bail today is inescapable, in my judgment, is the need to consider as a whole the materials which are before the Court, in order to seek to assess risk. I have to consider the picture of absences from the UK alongside the evidence relating to leaving Hungary without complying with conditions, in both 2019 and 2020, and the evidence in relation to the arrest in December 2020. I have to put all this alongside the prospect of extradition, to face criminal process in Hungary and the prospect of conviction and a significant custodial sentence if convicted. I have to put it alongside the question of the perception concerning grounds and prospects of resisting extradition, including the "serious" point which will be raised in the context of two of the warrants about not having yet been "formally charged", and including in light of impact evidence and the pattern of care for the daughter, and Article 8 considerations. So far as that is concerned, I need to have in mind the implications of the pattern regarding the Applicant's absence, in relation to which serious questions arise, on the materials. In all the circumstances, and on all the materials, my conclusion is that the presumption in favour of the grant of bail is displaced in this case. There are, in my assessment, on the materials and in the circumstances, substantial grounds to believe that – if released on bail and notwithstanding the proposed conditions – the Applicant would fail to surrender.

15.
It goes without saying that nothing that features in my reasoning on bail should in any way serve to constrain or influence any court having a primary fact-finding function in this case, with the benefit of detailed consideration of the chronology and the documents, and with the benefit of live evidence and cross-examination. The application for bail is, however, refused.

6.7.21