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No. CO/4213/2021

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

[2021] EWHC 3557 (Admin)

Royal Courts of Justice

Monday, 20 December 2021

Before:

MR JUSTICE CHAMBERLAIN

B E T W E E N :

JAMES PATRICK GERALD FLYNN Applicant

- and -

THE HIGH COURT, REPUBLIC OF IRELAND Respondent

MR G. HALL appeared on behalf of the Applicant.

MS A. BOSTOCK appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE CHAMBERLAIN

1

This is an application by James Flynn for bail, pursuant to section 22(1A) of the [Criminal Justice Act 1967](#).

2

Mr Flynn is sought by the Irish Authorities pursuant to an arrest warrant issued by that country's High Court under the Trade and Cooperation Agreement between the European Union and the United Kingdom on 12 July 2021, and certified by the National Crime Agency on the same day.

3

The warrant seeks Mr Flynn's surrender for six burglaries and a conspiracy to burgle, all said to have taken place between November 2012 and January 2013, and a robbery on 25 January 2013 in which an officer of the Garda Síochána was shot at point blank range and killed, and another police officer was held at gunpoint. In one of the burglaries a car which was used as the getaway vehicle in the robbery was stolen.

4

Mr Flynn was arrested on 15 July 2021 and produced at Westminster Magistrates' Court on that day. Bail was refused then and again on 22 July 2021. The application was renewed to the High Court and, on 30 July 2021, Fordham J refused bail again, for reasons which he gave in a judgment reported at [\[2021\] EWHC 2188 \(Admin\)](#). He gave six reasons which can be summarised as follows:

(i)

The matters for which the applicant was sought were serious, in particular the robbery, which involved an ambush undertaken by five people, and which resulted, as I have said, in the shooting dead of a police officer, and the holding of a second officer at gunpoint.

(ii)

In 2020, Brady was convicted by a jury in Dublin of the murder of the officer. In that connection, Ms Bostock, who appears for the Irish Judicial Authority before me, points out that the appellant now knows that the evidence, which was circumstantial as it is in respect of the appellant, was sufficient to convict Brady.

(iii)

According to the Irish Authorities, Mr Flynn was best friends with Brady and in his company on an almost daily basis in January 2013. Mr Flynn was interviewed in February 2013 and gave a statement to the police in which he is said to have provided a false alibi for Brady.

(iv)

The warrant details features of the case and evidence against Mr Flynn, which gave rise to very substantial risk and incentive, that Mr Flynn would seek to evade and avoid accountability for these offences by absconding and failing to surrender.

(v)

Mr Flynn was young and mobile and had relocated several times in the past, including to the United States, of which he is a citizen. He went there in 2003, shortly after speaking to the Gardai. He came back to Northern Ireland in 2017 and has since relocated to England, though this, I am told, was only a few days before his arrest under this warrant. There were indications that his wife and young son were also mobile.

(vi)

Mr Flynn relocated to the United States in April 2013, just two months after giving a statement in relation to the robbery of which his best friend, Brady, was suspected. Brady also relocated to the United States as the two other individuals, one of them Mr Flynn's brother, who went there via Australia, and are said to be implicated in the conduct covered by the warrant. A third individual

sought for the offence was the individual with whom Mr Flynn said in his 2013 statement he had spent the day of the robbery.

5

The extradition hearing was listed on 4 November 2021 but was vacated and relisted in April 2022. A further application for bail was made at Westminster Magistrates' Court on 6 December 2021, and refused by District Judge Godfrey.

6

On behalf of Mr Flynn, Mr Graeme Hall submits that there has been a material change of circumstance since the refusal of bail by Fordham J in July of this year. Two principal matters are relied upon. The first is the increase in security, £185,000, up from £100,000 before Fordham J. The increase in the amount offered by the sureties £965,000, up from £350,000 before Fordham J, and the offer of a bail address in England. The second is the service of further information from which it is said it can now be seen that Mr Flynn did not give a false alibi. The warrant alleges that in 2013 he said in his statement that he was with Brady "for most of the day" of the robbery. Mr Hall says this does not show that he gave a false alibi since the robbery took place at 9.25 p.m. Furthermore, Mr Hall says that further information given by the Judicial Authority on 21 October 2021 shows that Mr Flynn co-operated with inquiries made by the police service of Northern Ireland on behalf of the Garda and by the Garda themselves.

7

The further information says that some of the account provided by Mr Flynn was incorrect, but does not specify in what respect. Mr Hall also says that Mr Flynn did not flee to America, the warrant itself alleges that he and his brother spent each summer in the United States where they operated a paving business. Mr Hall submits that the further information shows that Mr Flynn invited the PSNI to speak to him after giving his statement, which would be odd behaviour if he had just given a false alibi. Mr Hall adds that the further information confirms that he has travelled between the US, England and Northern Ireland, putting himself within easy reach of the Irish authorities on many occasions. There are statements from his wife and cousin, who indicate that he has travelled to the Republic of Ireland on many occasions, indeed on a weekly basis.

8

Mr Hall also relied in his initial skeleton argument on Mr Flynn's vulnerability. It was said that the requesting State accepted, through counsel, at the hearing on 4 November, that he suffers from PTSD. The need to obtain a medical report was one of the reasons why the hearing was adjourned. That medical report has not yet been prepared, so I place no weight on that matter. In addition, Mr Flynn's first child has been diagnosed with autism and his partner is finding it increasingly difficult to cope without him. He proposes a bail address in Morecambe so that his wife and child can join him while he contests the extradition proceedings.

9

I have considered carefully whether the matters relied upon by Mr Hall give rise to a material change of circumstances. I have also reached my own separate conclusion on all of the information before me. In my judgment, the matters relied upon do not materially alter the position as it was before Fordham J. Although it is true that the security has increased and the sums offered by the sureties have also increased, the robbery in particular is a very serious offence for which a substantial sentence would be inevitable. The Irish authorities remain of the view that Mr Flynn provided false information in his statement in 2013. The fact that he volunteered the same information to the PSNI, and then again to

the Garda does not seem to me to make it less likely that the information was false. It is not for this court to try the question whether the information was false. Given that this is a category 1 case it is sufficient for present purposes that the Irish authorities assert that it was.

10

I accept that the warrant and further information both show that Mr Flynn had spent previous summers in the United State. Nonetheless, the fact that he travelled to the United States shortly after giving his statement, and that Brady and others named in the warrant also did so, gives rise to, as Fordham J put it "serious concerns", as does Mr Flynn's admitted association on the day of the robbery with another individual said to have been involved in it. These concerns are not, in my judgment, allayed by evidence that he had travelled to the United States before, nor by the fact that he travelled across the border from Northern Ireland to the Republic on a number of occasions thereafter; such journeys would not have brought him to the attention of the Irish Authorities, given the lack of infrastructure on the border between Northern Ireland and the Republic.

11

It remains the case that Mr Flynn is sought for involvement in at least one very serious offence, in the course of which a police officer was murdered and another held at gunpoint. If convicted of that offence, as I have said, a very substantial custodial sentence is inevitable. Mr Flynn is a United States citizen who has frequently travelled between the United States, England and Northern Ireland, and has the wherewithal to abscond if he wished to do so. Like Fordham J, I do not accept that his family ties, great as they are, are such as to reduce the risk of his absconding to an acceptable level. I have not seen any expert evidence to indicate that continued detention is impacting significantly on his mental health. Despite the very considerable security offered by Mr Flynn himself, and by his sureties, I have reached the same view as Fordham J and District Judge Godfrey: the risk of failure to surrender in the circumstances of this case is too great. The presumption in favour of bail in this accusation warrant case is therefore displaced.

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The application is refused.
