Neutral Citation Number: [2022] EWHC 240 (Admin)

Case No: CO/216/2021

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

Royal Courts of Justice

Strand, London, WC2A 2LL

Tuesday 8th February 2022

Before:

MR JUSTICE FORDHAM

- -

Between :

MACIEJ SZYMANSKI **App**

- and -

POLISH JUDICIAL AUTHORITY **Respo**

- -

- -

George Hepburne Scott (instructed by Bark & Co) for the **Applicant**

Tom Cockroft (instructed by CPS) for the **Respondent**

Hearing date: 8.2.22

Judgment as delivered in open court at the hearing

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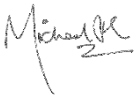
Approved Judgment

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 and 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. The Applicant is aged 51 and is wanted for extradition to Poland. That is in conjunction with an accusation Extradition Arrest Warrant (ExAW) issued on 26 April 2021 and certified on 8 September 2021. It relates to alleged index offending (committed when aged 44 and 45, between January 2015 and March 2016) involving two offences of participation in trading in cannabis, including across borders. The maximum sentences described are 5 years' and 12 years' imprisonment. The substantive hearing before the magistrates' court is due to take place on 8 April 2022. Nothing which I say in this ruling is intended to or should be taken to cut across factual matters which will need to be the subject of findings on evidence at that hearing. Reference is made in the papers to a 5-year-6-month sentence for which it is said that the Applicant is (or may be) also at some subsequent stage pursued. Mr Cockroft, very fairly, has made clear that he places no reliance on that matter, even so far as concerns the Applicant's perception of what he may face.

2.
The mode of hearing was a remote hearing by Microsoft Teams. That was an arrangement which the Court made, in conjunction with the wishes of the parties, having received communications which explained good reasons why such an arrangement would be appropriate. We were able to list the case for 9:30am, without needing any additional arrangements to burden the court staff. I was able to hear submissions in exactly the way I would have done in the court room. Both Counsel were satisfied that the remote mode of hearing involved no prejudice to the interests of their clients, and so was I. The open justice principle was secured in the usual ways: through the case and its mode of hearing and start time being published in the cause list, together with an email address usable by any member of the press or public who wished to observe this public hearing.

3.
The case for bail, in essence as I see it, is as follows. This Court has a wide jurisdiction to deal with the question of bail. It does so by consideration "afresh" rather than by way of a supervisory review of the decisions – by DJ Snow (on 17 November 2021) and/or by DJ Rimmer (on 24 November 2021) – refusing bail in the magistrates' court. This is an "accusation" ExAW and therefore a presumption arises in favour of the grant of bail. There is a strong case for resisting extradition including by reference to issues of extraterritoriality (Extradition Act 2003 s.64) and inadequate particularisation of the alleged offending (s.2). The Applicant is vigorously defending extradition and has every incentive to comply with bail conditions, in order to be able to do so. He has strong ties with the UK having been here, on the face of it, for some 4½ years. He also has significant family connections and is maintaining a strong affection for the (now nearly 5-year-old) son that he and his wife brought to the UK in the summer of 2017 as a baby, together with the (then 10-year-old) stepdaughter, with whom he shared a family life until separating from his wife in 2019. He also has two adult sons in the UK. He has lived, on the face of it, a blameless and industrious life in the 4½ years for which he has been here in the UK. It is strongly submitted on his behalf that he did not come here as a "fugitive". He also maintains that he previously engaged with the Polish authorities, having been made aware of the matters for which his extradition is sought, to which he says he responded in writing. To the extent that concerns arise as to any failure to surrender, stringent bail conditions are put forward. They include the retention of his Polish identity card seized on his arrest; the usual prohibitions on seeking to obtain travel documents or visit travel hubs; a residence requirement, to live (with the friend with whom he has cohabited) in Banbury, the place where he had the workplace and would

intend to resume work; an electronically-monitored curfew between 11pm and 4am; and finally, and significantly, a £3,000 pre-release security.

4.
I am not prepared to grant bail in this case. Notwithstanding the presumption in favour of the grant of bail, in my assessment it is displaced by the substantial grounds for believing that, if released on bail and notwithstanding the proposed conditions and any other conditions that the Court could properly devise, the Applicant will fail to surrender. The starting point is that the alleged criminality which is the subject matter of the ExAW constitutes serious matters and, if convicted, would be expected to involve a substantial period of custody. The nature of the grounds for defending extradition – about which it is no part of my role to form any view or assessment – may very well be perceived by the Applicant as capable of 'cure', even to the extent that there is any deficiency in the ExAW. In any event, his perception is – for the purposes of assessing risk and bail – likely to be that he faces the very real prospect of surrender to Poland for prosecution and, if convicted, a very substantial term in prison. It is relevant, in my assessment, to have in mind that it is accepted that he had served previous periods of custody in Poland, including a 4-year prison sentence from which he had been released in 2013. If convicted of the index offences, it would mean that he committed those offences relatively soon after that release, and acting in conjunction (as is alleged) with associates whom he had known in prison. I keep in mind, obviously, that the index offences are at this stage only allegations, and that he denies them.

5.
There are assertions in the papers before the Court which need to be read in the overall context. The Applicant has been described in the documents as "very attached" to the two children: his son and stepdaughter. But, as Mr Hepburne-Scott fairly accepted for the purposes of today, on the papers before the Court the separation in 2019 from his wife has led to circumstances which appear to involve an ongoing "inability" on his part to maintain any regular "contact" with, and an "estrangement from", those two children. There is a recent statement, from the friend with whom the Applicant cohabits, describing the position in those terms, which can be put alongside his own written statements. This necessarily undermines the strength of any "anchoring" ties, so far as his presence in the UK is concerned. So far as concerns the Applicant's assertions about not having come to the UK as a "fugitive" and, having become aware of correspondence about these criminal matters, about having engaged by communicating in writing to the Polish authorities, that assertion also has to be put alongside the other material. There is clear Further Information from the Respondent requesting state which states, clearly and in terms, that the Applicant 'did not contact the regional public prosecutor's office in any way'. I emphasise that I am not making any findings of fact. But in the assessment of risk there is this difficulty. The Applicant assertion, on this significant point, is undermined by the evidential material which has been provided to the Court and on which, on the face of it, it is appropriate for the Court to place reliance.

6.
I leave aside the question as to where his adult sons (as they now are), from his earlier relationship, had been while he was still in Poland (up to July 2017). The fact is that there is, in the Applicant's background, evidence of "mobility". It includes a period of time in which he lived in the Netherlands. Insofar as the friendship with the person with whom he has cohabited in Banbury is relied on, that is of limited duration and, put at its highest, cannot in my assessment constitute a strong "anchoring" feature.

7.

It is in the light of all of these considerations that, in my assessment, there are in this case substantial grounds for believing that the Applicant would fail to surrender if I ordered his release on bail, notwithstanding the proposed conditions that have been put forward. It is therefore for these reasons that I have reached the same conclusion as did the two district judges who previously refused bail in this case.

8.2.22