Neutral Citation Number: [2020] EWHC 1570 (Admin)

Case No: CO/2087/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 June 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

JEFFREY LENDRUM	**Applicant**
- and -	
BRAZIL JUDICIAL AUTHORITY	**Respondent**

- -
- -

Florence Iveson for the **applicant**
Ben Lloyd for the **respondent**

Hearing date: 16 June 2020

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 pursuant to section 22(1A) of the Criminal Justice Act 1967, in circumstances where the magistrates court has previously withheld bail in extradition proceedings. I am not reviewing any refusal of bail by the magistrates; I am looking at the bail merits afresh: see the observations of Mr Justice Stewart in the case of Tighe [2013] EWHC 3313 (Admin) at para 5. This has been a remote hearing by telephone. The hearing and its start time were listed in the cause list published online, with contact details for anyone wishing permission to observe the hearing. Counsel were able to address me in exactly the way that they 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 by the mode of hearing, 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 wanted for extradition to Brazil. He is wanted in conjunction with a conviction warrant which concerns a conviction in November 2015 and a sentence of 4 ½ years, all of which is unserved. The case for bail, as I see it, really comes to this. The "crux", as Ms Iveson put it in her oral submissions, is previous compliance. Earlier in these extradition proceedings, when a warrant was first issued on 15 April 2019, bail was granted on 7 February 2020 by the senior district judge. It was granted on stringent conditions and they included a electronically monitored curfew and a security of £7,000. The applicant complied with those conditions. He was then discharged on 19 March 2020. He remained in the United Kingdom, having been warned that it was on the cards that the extradition process might be reactivated. It was reactivated and the warrant was resubmitted on 14 April 2020. This time it was with an assurance relating, at least, to prison condition floor space. That was in circumstances where deadlines, for the provision of a suitable assurance, had not been met with one which was satisfactory. That was the reason why he had been discharged on 19 March 2020. The compliance went further because he was specifically informed by mobile phone contact on 29 April 2020 that he was going to be picked up in conjunction with this resubmitted warrant. He called back to confirm and was then picked up on 1 May 2020. On the basis of that, Ms Iveson invites me to conclude that this is a case where there are not substantial grounds for considering that he would fail to surrender if I bailed him today. She adds a number of matters to that. They include the fact that in June 2018 for a period from 26 June 2018 to 25 July 2018 the applicant had been on police bail in conjunction with his arrest at Heathrow on 26 June 2018. He complied on that occasion and was then remanded by the Uxbridge magistrates on 25 July 2018 and tried at Snaresbrook Crown Court. Following his release on licence at the relevant stage of a 37 month prison sentence, he was the subject of licence conditions from 2 December 2019 until 23 December 2019, with which he also complied. By that stage at least, even if he had not been aware in June 2018, he was now aware of the extradition 'red notice'.

3. In addition to that pattern of compliance Ms Iveson relies on a number of further matters. She says that the court has an explanation for why her client left Brazil as he did at the end of 2015 or January 2016. That explanation describes him as having reached the point where he was not able to stay, running out of money and suffering from spider bites needing medication. It also includes reference to his fear relating to prison conditions in Brazil and Ms Iveson makes the submission that that on the face

of it was a well-founded fear, given the fact that assurances have subsequently been needed. She next says there are what she submits as 'strong ties' with the United Kingdom, emphasising that the applicant's stepdaughter and a close friend are here in the UK. Each of them have given statements which I have read. She says the applicant has a proper basis for resisting extradition, not just the floorspace point which has now been addressed on the face of it in the April assurance, but on wider article 3 issues. She submits that there is a strong package of conditions which will address any concerns the court may have as to failure to surrender or as to reoffending risk. She emphasises the very stringent nature of a 20-hour electronically monitored curfew which she says would render the cross-border offending, of which he has in the past been guilty, virtually impossible, even were he to wish to engage in it. There are various other familiar restrictions aimed at eliminating risk of international travel, and a security in the sum of £8,5000 which is increased from the £7,000 which satisfied the senior district judge in February. Finally, she submits as a further theme that all of the circumstances are exacerbated, in a relevant way, by the obvious and serious concerns arising from the Covid pandemic. There are the known realities so far as prison is concerned, bearing in mind that, although not in a category of extreme vulnerability, her client does have relevant health conditions and he is aged 58. The hearing is a long way away, on 18 October 2020 before a district judge, and there are problems of restricted access.

4. I have looked at this matter afresh in a carefully considered those matters and the others that have been put forward. I am not, though, persuaded by them and I am not going to grant bail in this case. Bail is resisted by the respondent on two independent grounds and I accept them both. There are, in my assessment of the material as it stands before me, substantial grounds for believing that the applicant would, if released and notwithstanding the conditions put forward, fail to surrender; and commit an offence on bail. I am going to explain the reasons that have led me to that assessment. The starting point is to recognise that this is a conviction warrant and that there is no right or presumption in favour of the grant of bail, as both Counsel accept. Then, in relation to the Brazil conviction, that it is a sentence of 4½ years which is unserved and would face being served, which is a very substantial prison sentence which clearly there is a strong incentive to avoid it.

5. Weighing heavily in my assessment of the facts and circumstances are the circumstances as they were at the end of 2015. The applicant had been convicted and sentenced to that 4½ year prison sentence. He had lawyers, he right had a right of appeal and that appeal was pursued. It is clear from his own statement, moreover, that that appeal was something which was discussed between him and the lawyer who represented him. He was at liberty in Brazil, but only at liberty in Brazil on the basis of bail and bail conditions. Those conditions, as everybody accepts, prevented him from leaving. Moreover, his passport had been confiscated and he had 'no means of legitimately leaving the country'. It was in those circumstances that he did leave Brazil. He did not comply with those conditions. He says he crossed the border to Argentina and then applied for an emergency travel document and in that way he was able to get himself away from facing the Brazilian sentence. It is true that experience in a Brazilian prison featured in his thinking, although it said that a number of other factors including running out of money and his health made him 'desperate' to leave. On the face of it, he breached the conditions that have been imposed on him, by a system that had released him on those conditions. On the face of it, he did so a short

period after discussing the appeal with his lawyers because it is accepted that he was convicted in November 2015 and had left by the latest January 2016. I add as a footnote, although I treat it with some caution, the fact that – on the face of the appeal documents drawn up and put forward on his behalf in Brazil – was the fact he was saying to the Brazilian courts, not only that were there 'no documents' to support the suggestion of the prior record of exporting endangered wild bird eggs illegally, but also that he 'had not been convicted in Canada or Zimbabwe' of such an offence. On the face of it, judging from the decision in this jurisdiction of the Court of Appeal Criminal Division in February 2011 at [2011] EWCA Crim 228, that was thoroughly misleading and he did indeed have those previous convictions: 1984 in Zimbabwe and 2002 in Canada.

6. It is true that the various periods of compliance with conditions which Ms Iveson rightly emphasised on his behalf are factors, and on the face of it strong factors, in his favour. But, in my judgment, that pattern of compliance is not sufficient in the circumstances of this case to displace the serious concerns that I have, for the reasons that I have given. So far as February 2020 is concerned, again Ms Iveson rightly invites me to avoid any finding or assessment which is not justified on the evidence, and she says there was no concrete indication that stage as to whether or not an assurance was or was not going to be forthcoming as required by 19 March 2020. However, there is a relevant difference on the face of it, in my assessment, between the position in February 2020 where it could properly be set that the extradition pursuit was running colder and the position today when it can properly be said, in the light of the April assurance, that the pursuit of extradition has heated up considerably. So far as that heating up is concerned, I accept that the applicant on the face of it knew, certainly by the time of being contacted on 29 April 2020, that extradition was back on the cards and that that would have meant that there was a new and prima facie compliant assurance. I have therefore carefully considered whether the facts that he was contactable on 29 April 2020, engaged with the police on that occasion, and was then compliant and being picked up on 1 May 2020, is a sufficient basis for me to be satisfied that that there are no substantial grounds for believing that he would fail to comply on this occasion. I have reached the conclusion that in all the circumstances, right it is that he behaved in that way on that occasion, my concerns remain unabated. The previous compliance in relation to June 2018 and December 2019, and putting all of these matters together cumulatively, do not persuaded me that there is anything other than substantial grounds to consider that he would fail to surrender.

7. There are other features of the case which are relevant to the assessment. I emphasise, as invited by Ms Iveson again, that I must avoid speculation; and that there is, for example, no basis for me concluding that, as things stand on the face of the materials, the applicant has a 'criminal lifestyle' from international criminal export of endangered birds eggs. But what there definitely is in this case is an international dimension to the applicant and his life and connections. His conviction while in Brazil was a conviction for smuggling rare and endangered eggs, in conjunction with which he was described as highly 'professional', and he was then boarding a flight to South Africa. When he was arrested on 26 June 2018 having left Brazil a couple of years earlier, that was an arrest at Heathrow airport when he was arriving on a flight from South Africa, again in conjunction with the export of endangered wild bird eggs. It is known and recognised in the papers, and reflected in the Court of Appeal Criminal

Division judgment to which I have referred, that this is a lucrative form of undertaking. The eggs in that case were described as having a £70,000 value and the court specifically records that there had been evidence that the applicant would be likely to seek to sell those exported eggs in the Middle East. The applicant was born in Zambia there is a statement in the materials describes a friendship at the time of being at school in Zimbabwe. A statement of a friend refers to visiting him at his home in Cape Town, South Africa. The respondent the Brazilian authorities certainly regard him as resident in South Africa. He is an Irish national. He has a conviction in Canada from 2002 and a conviction in Zimbabwe from 1984.

8. I have been unable to find in the materials what I would characterise as 'strong ties to the United Kingdom'. I accept, on the face of it, that he has offended in this country in 2010 and 2018. Ms Iveson rightly emphasises that there are are the statements before me from a friend and from a stepdaughter. There certainly are 'ties' to the United Kingdom but I am not persuaded that they have a strength which is material in allaying the concerns that I have described or in anchoring the applicant to the United Kingdom. It is, for example, relevant to note that so far as a residence restriction is concerned, what is put forward is a property which will involve living at the address of the father-in-law of the stepdaughter. This is not a case where there is the anchoring effect of home ownership for example; nor what would persuade me as strong close and continuing 'family unit' relationships. All of this I put alongside the points I have made about the international nature are of the applicant's lifestyle, on the face of the documents.

9. So far as committing an offence is concerned I do not need to repeat the incidents which, on their face, suggest a pattern of unabated offending in the context of wild bird eggs and their export. That is a serious and lucrative crime, reflected no doubt in: the 18 month custody imposed by the CACD in relation to the 2010 UK offending; the 37 month custody imposed by the Snaresbrook Crown Court it in relation to the 2018 UK offending; and, of course, the 4½ years custody imposed by the Brazil court relating to the 2015 offending. I have no details in relation to Zimbabwe and Canada or anything else so far as offending is concerned. Quite independently of the risk of failure to surrender, in my assessment, there are serious grounds to believe that if the applicant were released, notwithstanding the conditions, he would commit a further offence on bail. So far as that is concerned, I accept the submission of Mr Lloyd that it is relevant that the offending continued after he had left Brazil in breach of the conditions that had been imposed on him. That was the June 2018 offending, having left Brazil at the latest in January 2016 in breach of those conditions. As it seems to me, it is also relevant to have in mind what I have been told about the applicant's impecunious current circumstances. I have to put that alongside what the papers clearly describe as a 'professional' expertise, so far as this lucrative form of criminality, unabated over the years, is concerned.

10. The bail conditions that are put forward are not sufficient to allay the concerns that I have. So far as concerns health and the Covid pandemic, the timeframe and the complications as to access, I accept that all of those considerations are relevant for me to consider as I have done, in arriving at the conclusion that I have expressed. So far as health is concerned what I am told is that the applicant is 59, on treatment for prostate cancer, taking medication for PTSD as well as pain relief. None of these features can outweigh the proper objections to bail. I accept the way Mr Lloyd put it

in his skeleton argument that so far as that point is concerned, that: these are not irrelevant considerations, but the court nevertheless is still required to consider the provisions of the Bail Act and if any of the objections to bail are properly made out then bail ought to be refused; that in relation to conditions in prison – and for that matter access – the court proceeds on the basis that the prison authorities will take all reasonable steps to protect health and well-being and to allow access. Of course, I am acutely aware of the implications of the ongoing deprivation of liberty in the present context and circumstances, for what will be an extended period given that the hearing has been scheduled for 27 October 2020. I accept that those are matters that have an aggravating effect, that bring into very sharp focus the court's assessment as to the appropriateness of bail. However, I am quite satisfied that it is necessary appropriate and proportionate in this case that the applicant should remain where he is in detention. For the two independent reasons that I have given, I refuse the application for bail.

11. At the end of the hearing a member of the press applied for, and I granted, permission to receive the skeleton arguments, for fair and accurate contemporaneous reporting.

16 June 2020