Neutral Citation Number: [2020] EWHC 2894 (Admin)

Case No: CO/3830/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27th October 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

PIOTR KOWALOWKA — **Applicant**

- and -

POLISH JUDICIAL AUTHORITY — **Respondent**

- -

- -

George Hepburne Scott (instructed by Bark & Co Solicitors) for the **Applicant**
Alexander dos Santos (instructed by the Crown Prosecution Service) for the **Respondent**

Hearing date: 27 October 2020

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 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, a district judge in the magistrates' court having refused bail on two occasions last month. It is common ground, and Mr Hepburne Scott reminds me and rightly emphasises, that I am not exercising a supervisory or review jurisdiction over those bail refusals. My role is to look "afresh" at the merits, on the material and submissions before me, of the case for and against the grant of bail. The authority for that approach is Tighe [2013] EWHC 3313 (Admin). That is the approach that I take.

2. The mode of hearing was BT conference call. Both Counsel were satisfied, as am I, that this mode of hearing involved no prejudice to the interests of their clients. We secured the open justice principle because the hearing and its start time were published in the cause list, together with an email address usable by any member of the press or public who wished by sending an email and then making a telephone call to observe this public hearing. A remote hearing eliminated any risk to any individual from having to travel to a court and will be physically present in one. I am quite satisfied that the mode of hearing was necessary, appropriate and proportionate.

3. The Applicant is aged 31 and is wanted for extradition to Poland in conjunction with a conviction EAW issued on 18 October 2019. That EAW relates to convictions and sentences in May and July 2017 for drug-related offending: involving two years custody and one-year custody, leaving two years 11 months 28 days to serve. It is common ground that for the purposes of today the focus has changed in that proceedings in Poland have led to a judgment aggregating the two previously imposed custodial sentences. An aggregated sentence was imposed on 5 February 2020 and upheld on appeal on 6 October 2020, earlier this month. It is also accepted that although it may follow that the existing EAW may be withdrawn, in the circumstances that would not mean extradition no longer being pursued but rather the position regularised to refer to the now aggregated and upheld custodial sentence. I will return in due course to the nature of that aggregated sentence. What happens next in this extradition case is that there is scheduled to be an extradition hearing before a district judge on 11 January 2021. Reference is also made on the papers to a point of principle relied on in all Polish extradition cases, relating to a case called Wozniak [2020] EWHC 1459 (Admin). The Divisional Court is due to hear the Wozniak case in December 2020 and can be expected to give judgment shortly after.

4. The essence of the case in support of the grant of bail put forward by Mr Hepburne Scott, as I see it, really comes to the following. I should put aside the approach taken and conclusions arrived at by the district judge or district judges last month and look afresh. Notwithstanding that no presumption arises in support of the grant of bail, Parliament has recognised that it can nevertheless be appropriate to grant bail in a conviction warrant case and this is an appropriate case. It is recognised that the now aggregated custodial sentence is 2 years 8 months. Nonetheless, there are good reasons why the Court can be satisfied in this case that there are no substantial grounds to believe that the Applicant – if released on bail – will fail to surrender; and any such concerns as may arise in this case are allayed by the bail conditions put forward. Mr Hepburne Scott emphasises that the Applicant has been in the United Kingdom since 2017 when he came here in search of work. He was working here, prior to his arrest in these proceedings. He does not have any criminal convictions in this country. He is in a long-term relationship with a partner. They cohabit together

with the partner's 12 year old daughter. The Applicant is described as treating her as his own child and playing a vital role in her upbringing. The partner has been in the United Kingdom since 2016 when she came here (with her 8 year old daughter). All three of them have strong ties here. She works and they both previously contributed to the household. In very challenging circumstances, she has been able to stretch to putting forward £2,000 as a pre-release security bail condition. This Court should recognise that as a very significant amount in difficult circumstances and one which she would ill be able to afford to lose, which is itself a strong tie so far as the question of the Applicant absconding is concerned. Finally, Mr Hepburne-Scott relies on the other proposed conditions, and such others as the Court may consider appropriate in this case, which he describes as 'comprehensive and coercive' and in his written submissions as 'stringent'. Alongside the £2,000 pre-release security to which I have referred there is a residence condition to live and sleep at the shared address; there is a proposed reporting condition to report frequently the local police station; there is an electronically monitored nightly curfew; and finally there is the continued retention of passport and identity documentation.

5. For the Respondent, Mr dos Santos opposes bail on the basis that there are substantial grounds to fear as he puts it that the Applicant will, if released and notwithstanding the conditions, fail to surrender.

6. I am not prepared to grant bail in this case and I am going to give my reasons as to why I have come to the conclusion that bail is not appropriate. The starting point, as has been recognised, is that this is a conviction warrant case so there is no presumption in favour of the grant of bail. In my judgment, based on all the facts and circumstances and the matters that are before this Court at this stage in these proceedings, and looking at the matter objectively, there are substantial grounds for considering that the Applicant will, if released on bail and notwithstanding the proposed bail conditions and any others that the Court could properly impose, fail to surrender .

7. The first key point relates to what the Applicant is facing. As a result of the aggregation judgment of 5 February 2020, to which I said I would return, the Polish court has reconsidered the position in relation to the sentences. Although there has been some reduction, there is a very substantial term which results from that process. The aggregated sentence is 2 years 8 months custody. Moreover, the Applicant through his Polish lawyers has been attempting to appeal against that aggregated sentence, but the appeal on 6 October 2020 – as I have indicated – was refused and the aggregated sentence of 2 years 8 months was upheld by the appeal court. That means there is a substantial period of custody which the Applicant faces and knows he faces through these extradition proceedings.

8. The next point in my assessment is a key part of the factual matrix. It is that the Applicant, on the evidence, came to the United Kingdom as a fugitive. He appeared at his trials in Poland. But he recognises, to his credit, in his proof of evidence that he was aware of the proceedings and had a lawyer who was representing him in court; and that he left Poland prior to the conclusion of those proceedings. He had in his previous years (aged 22) committed an earlier drug offence leading to an 18 month suspended sentence suspended for a period of 3 years. He had come into contact with the Polish criminal process again having (aged 26) committed an offence of brawl and battery leading to a 37 day custodial sentence. The significance of the circumstances

in which he left Poland, in my assessment, is this. This is an applicant who has already once taken steps to avoid facing responsibility in relation to these very matters. He has, moreover, done so by crossing borders and leaving one country to go to another. In my judgment, in the circumstances of this case, that – together with the custodial term being faced – is a significant indicator which militates against the grant of bail and is suggestive of real concerns as to failure to surrender.

9. The next point relates to the proceedings in this country and the stage they are at. I am making no findings in relation to issues that will be before the extradition court (the magistrates court). However, what is relevant – objectively – to my assessment as to bail is this. The Applicant may very well perceive as slender the prospect that he will be able successfully to resist extradition in this case: whether by reference to the Wozniak point over which he has no control or in relation to any arguments raised under Article 8 ECHR or any other grounds for resisting extradition. I repeat: I am not expressing a view on the merits. What weighs with me is the realistic prospect that the Applicant will currently be perceiving as slender his prospects of successfully resisting extradition. Moreover, both the Wozniak hearing and his own extradition hearing loom large in the near future.

10. I have carefully considered what I have been told and what I have read about the relationship with the partner, and about the daughter, and about their ties – all of them – to the United Kingdom. I also have to take into account the fact that I am not making findings of fact and there are limitations in relation to the evidence that has been (or could be) placed before a Court for the purposes of a bail application. It is certainly the case that 'staying together as a family of three' may be may very well be a very strong pull and factor so far as the Applicant is concerned. It may also be that the prospect of the working partner, and a daughter who is in education in this country and has been for several years, leaving in order to preserve the relationship between the three of them by 'going on the run' is something that may be extremely unattractive to both partner and daughter and therefore unlikely. What I have to consider though are the alternatives, viewed from the Applicant's perspective. There is a very real prospect that he will see the rupture of family life is something which looms large in any event given the extradition that he is facing and seeking to resist. In the light of all the circumstances, and by reference to the other features of this case, I have a very real concern that the course that he would take would be to seek, once again, to escape responsibility for these matters by, once again, crossing borders and going on the run.

11. The concerns that I have about failure to surrender in this case are not allayed by the bail conditions that are put forward. I accept, and respect, the £2,000 put forward and the circumstances which give rise to that, and no doubt the sacrifice that leads to that amount being identified. I would also want to make clear from the perspective of the Applicant and his partner that my decision does not turn on the fact that that amount has been found and some other amount that might be higher has not been found. My assessment turns on the factors which I have described. So far as the Applicant's previous convictions in Poland are concerned they factor into my assessment only in the way that I have described: namely, they are part of the backcloth and experience of the Polish criminal process and which are part of the story prior to the Applicant's decision to go on the run and leave Poland, knowing that he had the criminal proceedings and the prospect of custodial sentences against him.

12. It is for all those reasons that I am not prepared to grant bail in this case. My assessment is that there are substantial grounds for considering that, if released by me on bail on these conditions, the Applicant would fail to surrender and for those reasons bail is refused.

27.10.20