Neutral Citation Number: [2020] EWHC 2896 (Admin)

Case No: CO/3826/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28th October 2020

Before :

MR JUSTICE FORDHAM

- -

Between :
DAVID GETACHEW **Applicant**

- and -
DEPUTY PROSECUTOR OF THE REPUPLIC, ITALY **Respondent**

- -
- -

Graeme Hall (instructed by Eshaghian & Co Solicitors) for the **Applicant**
Benjamin Seifert (instructed by the Crown Prosecution Service) for the **Respondent**

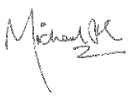
Hearing date: 28th October 2020

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.



.....

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. The Applicant is wanted for extradition to Italy in conjunction with a conviction EAW issued on 9 September 2018 (but which everybody envisages being replaced by an EAW issued on 8 May 2020 on which he has yet to be arrested). The index offending to which the EAW relates goes back to the period 2000 to 2006 (domestic abuse) with additional offences in 2006 (sexual abuse, failure to pay alimony) one of which (the alimony offence) it is common ground is not extraditable. The Applicant was convicted and sentenced in July 2013 and is wanted to serve a custodial sentence of 4 years 8 months. He is resisting extradition in the magistrates' court on a number of grounds and I have seen a skeleton argument setting them out. Bail has been refused by three different district judges on four different occasions in this case 27 April 2020, 13 May 2020, 7 August 2020 and 2 October 2020. Mr Hall for the Applicant emphasises, and I accept, that my jurisdiction involves considering the merits for and against bail "afresh" on the basis of the material before me and the submissions on both sides made about that material. I have to make up my own mind. I also accept that, although I cannot and should not make findings of fact (at least not unless I am completely confident about them), I do need to assess the relevant features of the case objectively on the material.

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. Open justice was secured because the hearing and its start time were published in the cause list, with an email address usable by any member of the press or public who wished to observe this hearing. That could be done simply by sending an email and then making a telephone call. I am satisfied that the mode of hearing was necessary, appropriate and proportionate. By having a remote hearing we eliminated any risk to any person from having to travel to a court will be present in one.

3. The essence of the case for bail, as I see it, comes to this. The Applicant is a person who on the evidence can be seen to have lived openly and honestly in the United Kingdom for 5 years. There is also evidence, including documents, which support the contention that he was openly dealing with public authorities including giving his then address in 2014 and 2015 when he was in Italy, but also back in 2007 for the purposes of employment matters. There are various other incidents relied on involving open dealing with public authorities. The submission made is that I should proceed on the basis of the premise that the Applicant is not a fugitive. This is a case in which a notification of a police investigation was given to the Applicant on 29 January 2006 but reliance is placed on a document reflecting documents from the file in Italy which records him as having attended a police station in March 2006, on which occasion a complaint made by the complainant to the various index offences was withdrawn. Mr Hall submits that, on the basis of all the material before me, his client should be taken for the purposes of bail today not to have been a fugitive in any respect and at any time. His fallback position is that, in so far as there was any circumstance which rendered the Applicant a fugitive, it was a limited respect in relation to one aspect for a period of time. This, Mr Hall says, is an individual who was not hiding from the authorities.

4. Next, strong reliance is placed on what are called, interchangeably, 'strong family ties' and 'strong community ties'. Reliance is placed on the description of the

profound importance of the Applicant to his family here in the United Kingdom. Following the breakdown of the former relationship with the former partner who made the allegations against him about events between 2000-2006, leading ultimately to the Italian conviction and sentence, the Applicant met his current partner in 2010 in Ethiopia where they lived for a number of years before returning to Italy in 2014. In 2015 the partner went to Ethiopia while the Applicant came to the United Kingdom and she joined him here in March 2016. Emphasis is placed on what is said about the very serious implications for the family if family life is ruptured. The Applicant is described as a committed father. The couple have two children, aged 5 and 7, both at school. The partner and children have important and serious needs and are reliant on the Applicant. Mr Hall submits that it is fanciful to suppose that the family as a whole might abscond. That means, he says, the issue is whether there is a sufficient basis of concern based on whether the Applicant would abandon his family and himself abscond in order to avoid his extradition.

5. Reliance is placed on the authority of Lanigan [2016] QB 252 at paragraph 58 on the basis of which Mr Hall's submission is that, following arrest on 26 April 2020 and in conjunction with various adjournments of the magistrates' court proceedings in relation to extradition, I should conclude that there is either or both of "insufficient diligence" by the authorities in the pursuit of extradition or, which he says is sufficient, "excessive delay". He submits that that is relevant to the analysis on failure to surrender but in any event would constitute a self-standing basis for the grant of bail.

6. Although there is no presumption in favour of the grant of bail in a conviction warrant case, Mr Hall emphasises that Parliament has provided that bail can properly be granted in such a case, and that there is no presumption against it. He submits that this is such a case. Finally, he submits and insofar as there are any concerns in relation to failure to surrender those are addressed and allayed by the proposed bail conditions. They include: a condition to live and sleep at the family home; an overnight curfew electronically monitored; reporting conditions; the retention of identity cards (if necessary by the whole family) and the usual prohibitions in relation to international travel and international travel hubs. Strong emphasis is placed on the £3,000 pre-release security which has been identified by the Applicant's partner in circumstances of great difficulty and effectively constituting her means. How, says Mr Hall, could the Applicant leave and abscond, and do so leaving his family behind and destitute?

7. Bail is opposed by the Respondent on the grounds that there are substantial grounds to consider that, if released on bail and notwithstanding the conditions, the Applicant would fail to surrender.

8. I carefully and anxiously considered all the points that have been strongly put forward by Mr Hall on behalf of the Applicant. But, having done so, I am not prepared to grant bail in this case. In my assessment, looking at all the material and doing so objectively, there are substantial grounds for considering that – if released on bail and notwithstanding the bail conditions – the Applicant would fail to surrender. The starting point, as is recognised, is that there is no presumption in favour of bail in a conviction warrant case. The reasons why, in my assessment, there are substantial grounds for considering that the Applicant would fail to surrender if released on the bail conditions are these.

9. In the first place, the Applicant faces extradition to serve a sentence in Italy of 4 years and 8 months. That is a very considerable custodial term. The avoidance of serving that custodial term is something which, in my assessment, is likely to constitute a serious incentive in the conduct of the Applicant. I say, straight away, that I accept on the face of it that there is strong material relating to the family's desperate need to avoid being parted. However, looking at the matter and the reality of the matter, the Applicant's position involves the fact that he is facing (i) extradition to serve that sentence (or at least face responsibility and any process in Italy) or (ii) being able to avoid that consequence. There are two ways in which that consequence could be avoided. One is to stay and fight the extradition with what Mr Hall characterises as a 'strong arguable case'. But there is an alternative, so far as the avoiding of the extradition is concerned, were the Applicant released on bail. That is the starting point in my assessment for the analysis. I am not forming any judgment in relation to the strength or otherwise of the grounds for resisting extradition. All of them will be matters to be considered by the District Judge, evaluating them leading to findings and conclusions which are for that Judge at that hearing, not for me today. For the purposes of today: in my assessment, in relation to bail and risk, it is a sufficient concern on this aspect of the case that the 4 years and 8 months, when put alongside the opportunity to take the alternative course and resist extradition through the extradition process, on its face presents a strong incentive to fail to surrender. That needs to be evaluated alongside the other material in the case and that is how I have looked at it.

10. The next key feature of the case that influences my assessment of risk relates to the question of whether, for the purposes of today, I can accept the premise invited by Mr Hall that his client is not to be taken to have been a fugitive. I have had close regard to the various features which I have already described and the relevant documents which I have been shown. So far as the March 2006 apparent attendance at the police station is concerned, it is relevant to note that – on the documents before the Court – the case of the Respondent authorities is that what was happening at that stage of the proceedings was in fact that the Applicant was forcing his ex-partner to withdraw certain complaints that she had made at that stage against him. What I cannot overlook, and what seems to me on the face of it to be material, is the evidence before me about what happened in and after January 2006 so far as concerns change of address and absence of notification of that change of address. It is very important that I say that nothing in these reasons is intended to or should influence any assessment by a District Judge of all the facts and all the documents and indeed any advantage that that judge will have (that I do not have) of oral evidence from the Applicant himself with cross-examination. Moreover, depending on what the findings of fact are and what else happens in this case, I can foresee that different circumstances could arise in any ongoing pursuit of extradition so far as a sound platform of factual findings is concerned, and the implications of that for bail.

11. Having said that, on the material before this Court, the factual picture is that on 29 January 2006 there was a formal notification given to the Applicant by the police. That formal notification had two functions, on the face of the evidence. The first was that it notified him that there was an ongoing police investigation into matters raised by his former partner. The second was that he was required to give an address and he was informed that it was his duty to inform the authorities if he changed his address. On the evidence before me, the position of the authorities is that he signed that formal

document; and yet he subsequently changed his address and failed to notify them. That is a point of significance, particularly bearing in mind that the most important focus – so far as openness and cooperation and candour with the authorities is concerned – is not working records or benefits or visits to register births or deal with identity documents. The most important interaction for the purposes of considering the Applicant's conduct relevant to these matters is the way he acted in relation to these matters and that notification. He has put before the magistrates' court in these proceedings a proof of evidence which deals with this point. He says: "It … appears that I signed a document, the content of which I cannot remember". He says: "I did not realise that there was an obligation to inform the police of any change of address". I repeat: I am not making any finding of fact. But that seems to me to be a key aspect of the story in this case. It would involve the Applicant not having understood either of the two key functions that that formal notification had. It would involve him having forgotten what it was all about. It would involve accepting that he had no understanding that he had an obligation to inform the police of a change of address. All of that may prove to be truthful and accepted. But, on the face of it, and viewing the materials objectively, that is a response which causes me sufficient concern that on this key element of the case that I have a real concern. It is that the Applicant in fact in this case had that formal notification relevant to these proceedings; that he did understand what was required of him; but that he did fail to do what was required of him. Wherever the other features of the case and the evidence overall may lead a district judge, so far as extradition issues and 'fugitivity' is concerned, this aspect troubles me in relation to these matters. Particularly when I then 'fast forward' to the present circumstance where what the Applicant now faces is return to Italy to serve a sentence of 4 years and 8 months.

12. The other matters that have been put forward in relation to 'fugitivity' – the invitations to look at the evidential picture in the round; a submission made about the way in which a district judge in this case previously approached fugitivity for the purposes of bail – all of which I have considered: none of which however allay the concern I have based on this aspect of the case, supported as it is by evidence before the Court. I am in no position to, and am not prepared to, accept the assertions that are made in the proof of evidence on this point by the Applicant. I repeat, I am not finding the facts I am assessing evidence and assessing risk.

13. The next point of concern relates to what happened in the United Kingdom on 27 April 2020 when the Applicant appeared before one of the various district judges who have dealt with these proceedings. I have a description from Counsel (in a skeleton argument that has been filed) which tells me that on that occasion the Applicant indicated that he did not accept that the EAW was in his name. The description goes on to explain that when a photograph accompanying the EAW was sent to his solicitor that objection was withdrawn. That description concerns me. Mr Hall has invited me to conclude that all that was going on, on that occasion, was that the Applicant was 'protesting his innocence'. I am unable to take that description of what happened on that occasion in that way. The description I have been given, which I am satisfied at least for the purposes of assessing risk it is appropriate that I take seriously, clearly relates to identity: there is a description of a 'section 7 issue'; moreover, there is within the description of what happened the provision of the photograph and the reaction to it. That would not have been relevant, if what was occurring on that occasion was that the Applicant was simply 'protesting' that he was not guilty of the

domestic abuse and sexual abuse alleged against him in Italy by his former partner in 2000 to 2006. On the basis of that reaction on that occasion, I am concerned on the face of it that the Applicant was 'seeking to avoid these proceedings', as it is put in the Respondent's skeleton argument. I am not satisfied that I have had a sufficient answer to that aspect of the case.

14. I have already indicated that I have taken carefully into account the evidence I have been shown and the points that have been made about the 'profound importance' of the Applicant to his family; their need for him and his relationship with them. I accept on the face of it that that is what that material shows.

15. I have considered whether in fact this is a case in which one of the relevant risks is that the family members themselves may seek to reconcile the important desire to be together as a family, and the important desire to avoid the family being ruptured through extradition, by all relocating elsewhere. I have in mind that both the Applicant and his partner are Ethiopian and both of their children were born in Ethiopia. I want to make clear that I have been persuaded by Mr Hall that it would not be right in the circumstances of this case to conclude, on that basis of the entire family relocating, that there is a relevant significant risk of failing to surrender. I also accept his submission that that could materially be addressed (or at least considered), so far as the other family members are concerned, by expanding the bail conditions. There are on the face of it two children who are in UK schools. Mr Seifert realistically does not put forward, at least as the 'greater likelihood of risk', the risk that the entire family might seek in different ways to leave the United Kingdom and reassemble somewhere else. I want to make that clear, in giving these reasons, that I do therefore focus on the prospect of whether the Applicant himself would fail to surrender with the implications of doing so for the family, including the loss of the £3,000 pre-release security. It is this aspect of the case that has given me greatest pause for reflection.

16. However, having evaluated the evidence and having considered the matter in the light of all the circumstances, I remain of the view that there are substantial grounds for considering that the Applicant would fail to surrender and would take the step of leaving his family behind, in order to avoid the consequence of extradition to serve 4 years 8 months by way of a sentence (or at least the prospect of doing so) in Italy; and that he would do that rather than the alternative – if released on bail and on these conditions – of remaining with his family and fighting his corner with his lawyers in the extradition proceedings.

17. I am unable to shake, on all the evidence in this case, the significant concerns that I have which constitute in my assessment substantial grounds for believing that he would fail to surrender if released on bail and notwithstanding these conditions.

18. So far as the Lanigan point is concerned I do not accept that it would be right, on a self-standing basis, to grant bail having concluded that there are substantial grounds for considering that the Applicant would – if released on these conditions – fail to surrender, on the basis of the conclusion that the detention period has become "excessive". The Lanigan passage cited by Mr Hall, as I read it, makes very clear that the question of "excessive" detention would only arise if the court has first considered and concluded that there has been "insufficient diligence" in the pursuit of the extradition proceedings by the relevant authorities. I am not persuaded that this is a

case which can properly be characterised as one in which the delays since arrest on 26 April 2020, including various adjournments, could constitute "insufficient diligence" so as then to lead to the prospect of the court concluding that the "excessive" detention triggers the grant of bail. Mr Hall, fairly and realistically, accepted that – whilst the delay in the case 'cannot be attributed to the Applicant' – it has largely been the Covid pandemic (including on one occasion the Applicant's own symptoms) which have led to adjournments. Moreover, I cannot overlook the fact that the time has been well used in the sense that reports dated and served in July, August and September 2020 have been provided to the magistrates' court as has Further Information from the Respondent. Insofar as Lanigan provides a basis on which an extradition court would grant bail, I am quite satisfied that this case does not lead to that conclusion in the application of the principle articulated by that Court.

19. For all the reasons that I have explained, in my assessment there are substantial grounds for considering that the Applicant will – if released by me on bail today – fail to surrender in the context of these extradition proceedings. Those concerns are not allayed by the conditions that have been put forward nor the prospect that I could impose other conditions including the seizure and retention of any identity or travel cards relating to the other members of the family. Mr Hall has said everything that could be said on behalf of his client and I have considered his written and oral submissions with care. But my conclusion is the one that I have expressed. Bail in this case will be refused.

28.10.20