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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2022] EWHC 1296 (Admin)



No. CO/435/2022

Royal Courts of Justice

Wednesday, 16 March 2022

Before:

TIM SMITH

(Sitting as a Deputy Judge of the High Court)

B E T W E E N :

THE QUEEN
(on the Application of JASPAL SINGH)

Claimant

- and -

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Defendant

MR R. HALIM (instructed by Leigh Day) appeared on behalf of the Claimant.

MR J. FRACZYK (instructed by Government Legal Department) appeared on behalf of the Defendant.

J U D G M E N T

THE DEPUTY JUDGE:

- 1 By this claim, the claimant challenges his continuing detention by the defendant. He seeks both permission to apply for judicial review and interim relief in the form of an order for his release.
- 2 The claimant has been detained pending deportation to India. His detention the subject of these proceedings began on 16 August 2020. A number of attempts to secure his removal to India have foundered on a failure to procure the necessary emergency travel document ("ETD").
- 3 The claimant suffers from asthma and mental health problems. The defendant accepts that he is an adult at risk, and his classification as such has fluctuated between Levels 2 and 3. The claimant also has a history of offending and is classified as a foreign national offender. He has a series of convictions for a variety of types of offence over a period of years and has received custodial sentences totalling 10 months.
- 4 On five separate occasions a Case Progression Panel ("CPP") has recommended the release of the claimant. Their recommendations have been based on various factors including the risk of harm to the claimant should he remain in detention, and the likely timescales involved in procuring the necessary travel documentation meaning that there is no realistic prospect of imminent removal. The CPP has acknowledged the high risk of the claimant reoffending and of absconding, but has said that these concerns could be addressed adequately by imposing safeguards attaching to his release, for example, a reporting obligation and electronic tagging.
- 5 The claim is brought on five grounds, which I summarise briefly as follows:
 - Ground 1 is that the defendant has breached her own Adults at Risk Policy so far as the claimant is concerned, and has thereby acted unlawfully. There are five subcategories to this ground.
 - Ground 2 is that the claimant's detention is in breach of the second *Hardial Singh* principle, namely that his detention has been for a period that is unreasonable in the circumstances.
 - Ground 3 is that the claimant's detention breaches the third *Hardial Singh* principle, namely that the claimant's deportation could not be effected within a reasonable period.
 - Ground 4 is that the claimant's detention breaches the fourth *Hardial Singh* principle, namely that the defendant has failed to act with diligence and expedition to effect the claimant's removal.
 - Ground 5 is pleaded as a separate ground, but it alleges that by reason of grounds 1 to 4 the claimant's detention also breaches his human rights under Article 5 of the Convention.
- 6 The claim was considered on the papers by Williams J. By her order dated 2 March 2022 she refused permission on all grounds and refused the application for interim relief. The claimant has renewed his claim and his interim relief application, and they have come before me today. The renewal does no more than restate the original grounds of claim.

7 I consider first whether or not permission to proceed with judicial review should be granted, and I do so by reference to the individual grounds cited.

Ground 1.

8 The first classification of the defendant as a Level 3 adult at risk was on 21 September 2021, although that classification was downgraded back to Level 2 on 24 November 2021. But, submits the claimant, his classification as a Level 3 adult at risk should have led to his release at least at that point. One of the CPP's recommendations for release came during the period when he was classified as Level 3. According to the defendant's policy, a Level 3 adult at risk should only be considered for continuing detention if a removal date has been set for the near future, there are no barriers to removal, and arrangements are in place for his safe return; or, if he presents a significant public protection concern, has been subjected to a four year or more custodial sentence, or he presents a national security risk. The claimant submits that none of these criteria are present.

9 The claimant's other sub-grounds within Ground 1 allege that, for various reasons, the claimant should have been classified as a Level 3 adult at risk earlier than he was, that his classification should not have been downgraded from Level 3 back to Level 2, and that even during his time as a Level 2 adult at risk he should have been considered for earlier release.

10 In response, the defendant submits that the claimant's "appalling immigration and criminal record" and repeated obstruction of the deportation process mean that he falls within a category where continuing detention, even for Level 3 adults at risk, is warranted. She also submits that the decision to classify or maintain the classification as a Level 2 adult at risk was one rationally open to her on the evidence. She further submits that the recommendations of a CPP, whilst requiring to be considered, are not binding on the defendant as ultimate decision maker.

11 In my judgment, on the evidence it is arguable that the defendant has applied her Adults at Risk Policy unlawfully. There is evidence of a deterioration in the claimant's mental health, not least by reason of his suicide attempts, but there is also the fact that the claimant's underlying asthma can itself be a reason for classifying an individual as a Level 3 adult at risk. It is arguable that the defendant's approach to classification in light of these factors has been irrational. Moreover, the defendant's CPP has recommended not once but, by my calculations, five times that the claimant should be released from detention and that the criteria which might justify his continuing detention, even as a Level 3 adult at risk, are capable of being overcome by appropriate release conditions.

12 For the claimant, Mr Halim took me carefully through the recent expert psychiatric report of Dr Galappathie. In my view, there is a strong prima facie case to show that it has not been looked at adequately, or at all, in the context of the assessment of the claimant's risk. That aspect of the case is especially stark and it is plainly arguable that it discloses an error of law. There are also strong prima facie grounds to say that the application of the policy, so far as the claimant's asthma is concerned, has been unlawful. In relation to other aspects of the complaint it may be that on a detailed examination of the other facts the defendant's approach stands up to scrutiny as a lawful exercise of her discretion, but I cannot conclude that the contrary is unarguable. I grant permission for Ground 1.

Ground 2.

13 There is a degree of overlap between Grounds 1 and 2. Ground 2, whilst expressed in terms of *Hardial Singh* principle 2, also relies on the several recommendations for release by the

CPP. In response, the defendant submits that the period of detention is objectively reasonable, and she provides examples of other cases involving foreign national offenders where the period of detention has been longer, but this does not address the submissions based on the recommendations of these CPPs, the failure by the defendant to consider evidence of psychiatric harm, and how the defendant generally has considered the relevant evidence. I therefore consider Ground 2 to be arguable.

Ground 3.

- 14 Ground 3 concerns the failure to procure an ETD within a reasonable timescale. At least seven attempts have been made to procure one through the Indian High Commission, and all have failed. Whilst it may be the case that the claimant has contributed to this failure in some limited cases by his lack of co-operation, and by the temporary obstacle created by his June 2021 asylum claim, that is not universally the case. The claimant has repeatedly asserted that he is willing to return to India. His signing up to the Facilitated Returns Scheme is consistent with that intention.
- 15 Administrative errors had been the cause of several failed attempts but, importantly, despite the defendant's officials' attempts more recently to expedite a decision, it remains the case that the stated prospects of a quick decision are bleak with nothing better than the average timescale of three months in contemplation. More recently there has been engagement with the Indian High Commission at a high level, but whilst this demonstrates some work in progress, the deadlines are constantly being pushed back with no set timescale being informed to the claimant. There have been encouraging noises as recently as 14 March 2022. But, as the claimant might fairly say, we have been there before.
- 16 It may well be that on a detailed examination of the evidence the court concludes that the actions of the claimant to frustrate the grant of an ETD, at least for a period, disallow his *Hardial Singh* principle 3 case, but I cannot conclude that the contrary position is unarguable. I therefore grant permission for Ground 3.

Ground 4.

- 17 Ground 4 alleges that the defendant has not proceeded with all due diligence owing to the administrative errors that have been made in procuring the grant of an ETD. The facts relied on in support of Ground 3 overlap with Ground 4. On a close analysis it may be that Ground 4 adds nothing to Ground 3, but essentially for the same reasons as for Ground 3 I consider that Ground 4 is also arguable, and I therefore grant permission for it.

Ground 5.

- 18 As to Ground 5 I fail to see that Article 5 raises any self-standing issues not already covered by Grounds 1 to 4. The way in which it is pleaded by the claimant implicitly acknowledges this. I agree with Williams J. when she concluded, when refusing permission, that it adds nothing to the case to plead it as a separate ground. I, too, refuse permission for Ground 5.
- 19 By reason of the above, in summary I grant permission to proceed with judicial review on Grounds 1 to 4, but I refuse permission for Ground 5.
- 20 I turn now to the application for interim relief.
- 21 For the claimant, Mr Halim has referred me in detail to the report from Dr Galappathie, a psychiatric expert, which was provided as recently as 26 January 2022. It contains

observations which show that the claimant is a person with particular vulnerabilities. It records his suicide attempts and the diagnoses that PTSD and anxiety appear both to be present. Importantly, it also expresses the view that the detention has caused a deterioration in the claimant's mental health condition. For the claimant it is also submitted that he has shown recent evidence of compliance and a desire to return to India. The authorities, moreover it is said, are not in a position to provide the medical care that he needs, as a result of which his release from detention is urgent.

22 When Williams J. refused permission on the papers, detention had not been reconsidered by the defendant in light of Dr Galappathie's report. According to the evidence it still has not been, since the Healthcare Enquiries Team on 8 February 2022 merely reasserted the previous findings regarding the claimant's mental health notwithstanding that they had by then been sent a copy of the new expert report.

23 In response, for the defendant, Mr Fraczyk says that there has been no attack on the conclusions that the claimant is at high risk of offending and absconding, and that the defendant is within her rights to detain him, even as a Level 3 adult at risk, in accordance with her policy. Moreover, he says it is correct that the claimant has been released from detention in the past on conditions, but that following a breach of those conditions his detention resumed. That, it is said, illustrates the risk of relying on the availability of conditions attaching to his release.

24 In considering whether or not to grant interim relief, I must have regard to the balance of convenience in this case. For the reasons I have already described, I have granted permission for four of the five grounds to proceed to judicial review and I am satisfied that there is a case to be tried.

25 In relation to the effect and impact on the claimant of his continuing detention, safeguarding measures should he be released are clearly important, but they can be imposed by the defendant without the dispensation of the court. It is correct that safeguards have not been observed previously, resulting in a return by the claimant to detention. But there are two material changes in circumstances since that time. Firstly, we now have an expert psychiatric report making it clear that the claimant's mental health is being harmed by his continuing detention and that he is a vulnerable adult. Secondly, on the evidence the claimant has clearly reconciled himself to, indeed is urging, his return to India. It is reasonable to expect that the terms on which he may be released, following the grant of interim relief, are now more likely to be complied with.

26 In my judgment, therefore, the balance of convenience is firmly in favour of the grant of interim relief. I accept that whilst interim relief would give some element of the final relief sought by the claimant, namely his release, it does not deal with the entirety of the claim in that there is still a damages claim which is not determined by the grant of interim relief.

27 For these reasons I also grant interim relief as requested by the claimant.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital*

This transcript has been approved by the Judge.