Case No: CO/4973/2017

Neutral Citation Number: [2018] EWHC 1050 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4/05/2018

Before :

LORD JUSTICE LEGGATT
MR JUSTICE DINGEMANS

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Between:

	The Government of India	**Appellant**
	- and -	
	Sanjeev Kumar Chawla	**Respondent**

- -
- -

Mark Summers QC and Aaron Watkins (instructed by **The Crown Prosecution Service**) for the **Appellant**
Helen Malcolm QC and Mark Weekes (instructed by **Bindmans LLP**) for the **Respondent**

Hearing date: 24 April 2018

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Judgment**Mr Justice Dingemans (giving the judgment of the Court):**

1. This is the hearing of an appeal by the Government of the Republic of India ("the Government") against the decision of District Judge (Magistrates' Court) Rebecca Crane ("the District Judge") dated 16 October 2017 to discharge Sanjeev Kumar Chawla ("Mr Chawla") in respect of an extradition request from the Government dated 1 February 2016.

2. This appeal raises issues about prison conditions in Tihar prison in India, and the District Judge's approach to a second assurance from the Government dated 22 September 2017.

3. The issues were refined in the course of oral submissions by both Mr Summers QC and Ms Malcolm QC. We are grateful to them and their respective legal teams for their assistance. The issues are now: (1) whether the District Judge was entitled to find a real risk of a breach of article 3 of the European Convention on Human Rights ("ECHR") on the materials which had been adduced before the District Judge; (2) whether the District Judge was wrong to exclude the second assurance; (3) whether after giving judgment on the relevant findings but before ordering the discharge of Mr Chawla, the District Judge should have given the Government a chance to address findings about the real risks in relation to article 3 of the ECHR by providing assurances; (4) what order should be made by this Court in the light of all the material that is now available.

The alleged offence, investigation and extradition request

4. The Government seeks Mr Chawla's extradition in respect of his conduct alleged from January to March 2000. It is alleged that Mr Chawla acted as a conduit between bookies who wanted to fix cricket matches and Hansie Cronje, then captain of the South African test cricket team. It appears that the alleged conduct was discovered when law enforcement agencies investigating an unrelated matter undertook telephone tapping. The telephone tapping revealed plans to fix forthcoming cricket matches between the touring South African and Indian test teams. Agreements were allegedly reached including as to the number of runs which would not be exceeded by the South African team in both of their innings in one match. The alleged conduct was contrary to the Indian Penal Code and would amount to conspiracy to give or agree to give corrupt payments in England and Wales.

5. A criminal investigation was undertaken in India. As part of that investigation Mr Chawla, who was born in India but had moved to the United Kingdom in 1996, was asked to provide a voice sample but he refused. The Indian authorities sought assistance from the South African authorities between 2004 and 2008. Voice analysis was carried out. In 2013 a final report into the investigation was submitted to the prosecution authorities in India.

6. An extradition warrant was obtained pursuant to an affidavit sworn before the Chief Metropolitan Magistrate, New Delhi on 27 February 2015. An affidavit was sworn by Bhisham Singh, Deputy Commissioner of Police, Crime Branch (South), New Delhi on 18 May 2015. An extradition request was made by the Government on 1 February 2016 and this was certified by the Secretary of State on 11 March 2016.

Proceedings in the Westminster Magistrates' Court

7. Mr Chawla was arrested and brought before Westminster Magistrates' Court on 14 June 2016. Mr Chawla gave notice that he contested the extradition proceedings and on 12 July 2016 a "Statement of Issues" was produced on his behalf. The compatibility of any prison conditions in which Mr Chawla would be kept pending trial and after any conviction with article 3 of the ECHR was raised as an issue at that time.

8. It appears, from the judgment of the District Judge, that the matter was listed before District Judge Purdy in November 2016 and for final hearing in March 2017.

9. A report from Dr Alan Mitchell dated 13 November 2016 on prison conditions was obtained on behalf of Mr Chawla. Dr Mitchell is a licensed medical practitioner. He was Medical Officer at HMP Shotts and from 1998 to 2002 was Medical Advisor and Head of Healthcare within the Scottish Prison Service. In 2015 he was appointed by the Scottish Parliament as a Member of the Scottish Human Rights Commission. He has provided expert reports in respect of extradition cases to India, the Russian Federation and the Czech Republic. In his report in these proceedings Dr Mitchell noted the absence of any national prisons inspectorate. Dr Mitchell referred to a previous report referring to India noting prison overcrowding, poor management and actual violence at the hands of state agents. Dr Mitchell referred to press reports of violence against prisoners. The report specifically noted, among other matters, "that all of the jails in the Tihar complex are grossly overcrowded".

10. The Government refused to provide Dr Mitchell with access to the Tihar prison. Dr Mitchell produced a further report dated 26 February 2017 which considered various documents including press reports of violence at Tihar prison. Dr Mitchell concluded "the problems of over-crowding at Tihar together with staff-prisoner violence have already been set out … I believe there to be a very real risk that if extradited to India and if he were to be held in the Tihar prison complex, that Mr Chawla's rights in respect of article 3 would be at real risk".

11. The Government then provided an assurance in a letter dated 28 February 2017. At paragraph 3 it was noted that "Mr Chawla is likely to be held at the Tihar jail complex in New Delhi …". It was said that pursuant to Delhi Prison Rules 1998 prisoners were kept in a "dormitory (barracks) or cell subject to the circumstances of the case"; "necessary blankets and bed sheet" would be provided; prisoners were provided with an "adequate quantity of clean potable drinking water"; there were a "sufficient number of toilets"; in Delhi prisons "almost every yard has sufficient space/yard attached"; and "every prisoner is provided three time meals/adequate food". The letter recorded that "… the Government of India, on the basis of information received from the Government of the National Capital Territory of Delhi and Tihar Prisons Authorities, solemnly assures that all such facilities available in Delhi prisons" should be provided to Mr Chawla without discrimination. An annex was headed "Best Practices in Delhi Prisons". This noted that there were 16 central jails in Delhi. 9 were at Tihar, 1 at Rohini and 6 at Mandoli. There was a combined sanctioned capacity of 10,026 prisoners but as at 30 November 2016 there were 14,027 prisoners. Education, vocational training, games and

recreational activities and other matters were covered by the Best Practices document. There was a response from the Government set out in a table to Dr Mitchell's report.

12. There was then a hearing which took place over 3 days in March and April 2017 before District Judge Purdy. After that hearing it became apparent that District Judge Purdy would not be well enough to produce a judgment. The matter was therefore listed for directions before the District Judge on 19 May 2017 and for a further final hearing on 25, 26 and 27 September 2017.

13. On 19 May 2017 directions were given for a further hearing of the extradition request. Although complaint has been made about a later case management decision made by the District Judge it seems that the directions were given orally and we have had to attempt to determine what the order said from recollections of Mr Watkins and Mr Weekes who appeared at first instance.

14. It seems that the District Judge directed that the parties should, by 18 August 2017, provide any further evidence for the final hearing listed on 25 September 2017. Any evidence in reply was to be served by 1 September 2017. No further evidence was served on behalf of Mr Chawla or the Government on 18 August 2017. In September 2017 it appears that Bindmans wrote on behalf of Mr Chawla asking the CPS whether any further evidence would be adduced on behalf of the Government but the letter was not answered.

The hearing before the District Judge

15. On Friday 22 September 2017 the Government provided a second assurance. The second assurance was forwarded to counsel for Mr Chawla by email over the weekend and on Monday 25 September 2017 the Government sought to rely on the second assurance. It appears, from the note of the judgment of the District Judge on this point, that it was said that the Government had had "problems", although the Government contends that it was said that there had been a regrettable misunderstanding, but no further explanation for the delay on the part of the Government was given. Objection was taken on behalf of Mr Chawla on the basis that the second assurance was too late. It was pointed out that the second assurance was given 18 months after the initial request for extradition, 15 months after the issue had been raised, and in breach of the order for directions on 19 May 2017. It was submitted on behalf of Mr Chawla that Dr Mitchell would need to carry out research and respond to the second assurance.

16. The District Judge gave a short oral ruling refusing to admit the second assurance. The ruling, a note of which has been provided by counsel, recorded that: the Government had had plenty of time to respond; the second assurance provided more detail about where and in what conditions Mr Chawla would be detained; it would be prejudicial to adjourn the proceedings; and that the Government could not simply say that they had problems.

This issue was not addressed again in the written judgment dated 16 October 2017.

17. The hearing then proceeded. Mr Chawla relied on a proof of evidence, but did not give evidence. Dr Mitchell gave evidence and was cross-examined. Professor Lau gave evidence about the Indian criminal justice system.

18. We were told that the hearing took 3 days. At the conclusion of the hearing the parties were given an extra day to lodge written submissions.

The judgment of the District Judge

19. The District Judge gave judgment on 16 October 2017 and set out the history of the proceedings, the limited evidence from Mr Chawla and the initial stages of the extradition. The District Judge considered the issue of passage of time and held that Mr Chawla was not a fugitive, that there had been substantial delay, but that it would not be unjust or oppressive to extradite Mr Chawla.

20. The District Judge considered the issue relating to prison conditions and set out the applicable legal principles, which were common ground. So far as is material the District Judge set out the evidence from Dr Mitchell and further evidence on behalf of Mr Chawla including a Home Office report on India Prison Conditions dated November 2016, a Commonwealth Human Rights Initiative report and Amnesty International reports.

21. The District Judge set out findings in relation to the material and evidence in paragraph 37 of the judgment noting that Dr Mitchell's evidence was limited by the refusal to allow him access to Tihar prison but that "he is able to provide an objective analysis of the other information available". The District Judge found that the level of overcrowding at Tihar prison was of itself sufficient to consider that there was a real risk of Mr Chawla's rights being breached if he was held there. The District Judge noted that recent reports from the Home Office and other reports recorded severe overcrowding and poor conditions and that the Home Office report had referred to a complaint which made "reference to sub-human conditions in Tihar, including the overcrowding and lack of medical facilities. One report had said that conditions are "frequently life threatening" and details the very poor conditions. Prisoners are also "physically mistreated". The District Judge noted that the Supreme Court of India had detailed in 2016 "that overcrowding remains a problem and that prison reforms have led to little change in practice". The District Judge recorded evidence about vacancies in medical staffing levels at Tihar prison, and a high level of deaths in custody.

22. The District Judge concluded, on the evidence as a whole, that there were "strong grounds for believing that [Mr Chawla] would be subjected to torture or inhuman or degrading treatment or punishment in the Tihar prison complex, due to the

overcrowding, the lack of medical provision, risk of being subjected to torture and violence either from other inmates or prison staff which is endemic in Tihar".

23. The District Judge then summarised the approach to assurances set out by the European Court on Human Rights in *Othman v UK* (2012) 55 EHRR 1 and identified relevant factors to be considered by a Court in assessing assurances. The District Judge considered those factors in relation to the first assurance (but not the second assurance which had been excluded) and concluded "given the findings in relation to the general nature of the assurance and the lack of an effective system of protection, the assurance is insufficient in its current form to ensure that the risk to the article 3 rights of [Mr Chawla] are mitigated".

24. The District Judge then dismissed Mr Chawla's complaint that extradition would infringe his article 8 ECHR rights, before ordering his discharge for the reasons given in relation to prison conditions.

Issue 1 - Real risk of inhuman and degrading treatment

25. We deal first with the issue of whether the District Judge was entitled to find a real risk of inhuman and degrading treatment contrary to article 3 ECHR.

Legal principles relating to the real risk of inhuman and degrading treatment

26. There is a presumption of good faith in extradition requests received from India which has had extradition relations with the United Kingdom for many years through the Commonwealth Scheme for Extradition, see *Patel v India* [2013] EWHC 819 (Admin) Parker J. The extradition treaty signed in 1992 was intended to make more effective the co-operation of the two countries in the suppression of crime by making further provision for the reciprocal extradition of offenders.

27. It is unlawful for the United Kingdom to extradite Mr Chawla where he is at real risk of being subjected to treatment contrary to the right in article 3 of the ECHR not to "be subjected to torture or to inhuman or degrading treatment or punishment". Detention for more than a few days in space measuring less than 3 square metres is likely to be such degrading treatment, see *Ananyev v Russia* (2012) 55 EHRR 18 and *Florea v Romania* [2014] EWHC 2528 (Admin); [2015] 1 WLR 1953 at paragraph 9, as is a lack of proper toilet facilities, see *Georgiev v Bulgaria* [2018] EWHC 359 (Admin). A failure to provide adequate medical facilities may give rise to a real risk of degrading treatment.

28. As a result of the presumption of good faith in extradition proceedings the requested person will need to establish on clear and cogent grounds that there is a real risk of inhuman and degrading treatment. When a requesting state is faced with an issue about

whether an extradited person will be subjected to a real risk of inhuman and degrading treatment contrary to article 3 of the ECHR, it may defend the issue by identifying that the evidence adduced on behalf of the requested person does not establish on clear and cogent grounds that there is a real risk of inhuman or degrading treatment. The requesting state may also adduce evidence to show that there is no such real risk. Another option available to a requesting state where such a real risk is shown is to provide an assurance, compare *Georgiev* at paragraph 8(v)-(ix). The position relating to assurances is addressed below.

Relevant principles relating to assurances

29. Even where there is evidence that there is a real risk of impermissible treatment contrary to article 3 of the ECHR the requesting state may show that the requested person will not be exposed to such a risk by providing an assurance that the individual will be held in particular conditions which are compliant with the rights guaranteed by article 3 of the ECHR. Such assurances form an important part of extradition law, see *Shankaran v India* [2014] EWHC 957 (Admin) at paragraph 59. The principles relating to the assessment of assurances were summarised by the European Court of Human Rights in *Othman v UK* at paragraphs 188 and 189 and those principles have been applied to assurances in extradition cases in this jurisdiction, see *Badre v Court of Florence, Italy* [2014] EWHC 614.

30. The Court may consider undertakings or assurances at various stages of the proceedings, including on appeal, see *Florea v Romania* and *USA v Giese* [2015] EWHC 2733 (Admin), and the Court may consider a later assurance even if an earlier undertaking was held to be defective, see *Dzgoev v Russia* [2017] EWHC 735 at paragraph 68 and 87.

31. It is established that an assurance is not evidence. This is because it is a diplomatic assurance provided by the requesting state about the future treatment of the requested person. In *United States of America v Giese* [2015] EWHC 3658 (Admin); [2016] 4 WLR 10 there was consideration of the powers of the Divisional Court to allow an appeal on the basis of a new assurance. It was held at paragraph 14 that an assurance was an "issue" and not "evidence" for the purpose of section 106(5)(a) of the Extradition Act 2003.

32. For those states which are for the purposes of the Extradition Act category 1 states, the Framework Decision provides at article 15(2) that if the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it should request supplementary information to be furnished as a matter of urgency and may fix a time limit for receipt thereof. The CJEU in *Criminal proceedings against Aranyosi and Caldarau* (Case Nos C-404/15 and C-659/15PPU); [2016] QB 921 ("*Aranyosi*") held, at paragraph 104, that where there was a real risk of impermissible treatment "the executing judicial authority must request that supplementary information be provided by the issuing judicial authority … which

must send that information within the time limit specified in the request. The executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end". This approach has been applied in *Georgiev* at paragraph 8(ix) and (x).

33. It was common ground before us that similar principles apply to India, which is an Extradition Act category 2 State. This was in part because the Extradition Treaty between the UK and India provides at article 11(6) that if the requested state considers that the evidence produced or information supplied for the purposes of the treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the requested state shall require. These terms are similar to article 15(2) of the Framework Decision.

Relevant principles relating to appeals

34. Prison conditions are unlikely to be static and to make a conclusion about the real risk of impermissible treatment the Court has to examine the present and prospective position as best as it can on the materials available, see *Elashmawy v Italy* [2015] EWHC 28 (Admin) at paragraph 90. The principles applicable to admitting fresh evidence in extradition appeals were set out in *Three Hungarian Judicial Authorities v Fenyvesi* [2009] EWHC 231 (Admin); [2009] 4 All ER 324 which were considered in *Elashmawy* at paragraphs 82 and 83. There are relevant provisions of the Extradition Act 2003.

35. It is established that when considering what approach to take to a challenge to a District Judge's findings about real risks of infringement of human rights the Court must have "a very high respect for the findings of fact", "we must also have respect for the DJ's evaluation of the expert evidence", and "the decision of the DJ can only be successfully challenged if it is demonstrated that it is `wrong'", see *United States of America v Giese* at paragraph 15 and *Dzgoev v Russian Federation* [2017] EWHC 735 (Admin) at paragraphs 23 and 24.

District Judge entitled to find a real risk of violation of article 3

36. Mr Summers submitted that there was no evidence to support the District Judge's finding of a risk of violation in this case. Leggatt LJ in the course of submissions noted that this was likely to be an uphill struggle for the Government. Mr Summers submitted that the expert evidence from Dr Mitchell did not assist because Dr Mitchell had not visited Tihar prison. It was suggested that the concerns referred to by the District Judge were based on unreliable complaints reported in newspapers.

37. We do not accept this characterisation of the expert evidence from Dr Mitchell or the evidence before the District Judge. Dr Mitchell relied on reports and information including: "Torture in India" a report by the Asian Centre for Human Rights in 2011 which detailed incidents of torture at Tihar prison in Delhi; the Supreme Court of India Writ Petition regarding "Inhuman conditions in 1382 prisons" order dated 5 February 2016 of Madan Lokur J. which included Tihar prison, recording that overcrowding remained a problem; and press reports. Dr Mitchell also referred to the local Government website in Delhi which detailed that as at 31 December 2015 the Tihar prison consisted of 9 jails, 8 of which held male prisoners. There were 14,183 prisoners with capacity (at that date) of 6250 prisoners. That gave overcrowding at 227 per cent, ranging from 169 per cent to 395 per cent overcrowding in certain jails. Dr Mitchell reported problems with access to a doctor when required.

38. The District Judge also had regard to other reports relied on by Mr Chawla, as well as findings reported from the Courts in India. Although it is right to say that the figure of 6,250 as the capacity for Tihar prison as a whole was taken by the District Judge, whereas it had increased to 10,026, the finding of overcrowding was properly made. This was because even on the Government's latest figures there were 14,027 detained persons. There was no detail to show how the detained persons were being held with the requisite amount of personal space notwithstanding this overcrowding.

39. There was also evidence on which the District Judge was entitled to make the findings about a real risk of violence and the absence of sufficient medical staff to provide adequate medical assistance for prisoners. This had been a particular issue identified by the Courts in India.

40. The District Judge then turned to assess the first assurance noting that it was in general terms but recording, as was established by the evidence, that there was not an effective system of protection against torture. There was no monitoring, as was evident from the judgments of the High Court in Delhi. These were permissible findings. We are unable to say that the District Judge's findings about a real risk of inhuman and degrading treatment contrary to article 3 ECHR were wrong.

Issue 2 - The District Judge was entitled to ignore the second assurance

41. The next issue is whether the District Judge was entitled to refuse to take account of the second assurance. It was common ground that this was in the nature of a case management decision. It is therefore necessary to consider the applicable rules.

Relevant parts of the Criminal Procedure Rules

42. The Criminal Procedure Rules Part 50 apply to extradition proceedings. So far as is

material the Rules provide:

Further objective in extradition proceedings 50.2 When exercising a power to which this Part applies, in furthering the overriding objective, in accordance with rule 1.3, the court must have regard to the importance of- (a) mutual confidence and recognition between judicial authorities in the United Kingdom and in requesting territories; and (b) the conduct of extradition proceedings in accordance with international obligations, including obligations to deal swiftly with extradition requests.

Preliminary hearing after arrest 50.9 … (2) the Court must … (d) give such directions as are required for the preparation and conduct of the extradition hearing.

Introduction of additional evidence 50.15(1) Where a party wants to introduce evidence at an extradition hearing under the law that would apply if that hearing were a trial, the relevant Part of these Rules applies with such adaptations as the court directs.

CPDXI Other Proceedings 50A: Extradition: General Matters …

General matters: expedition at all times

Compliance with these directions is essential to ensure that extradition proceedings are dealt with expeditiously … It is of the utmost importance that orders which provide directions for the proper management and progress of cases are obeyed so that the parties can fulfil their duty to assist the court in furthering the overriding objective and in making efficient use of judicial proceedings. To that end: … (iii) where the issues are such that further information from the requesting authority or state is needed then it is essential that the request is formulated clearly and in good time …

Relevant legal principles

43. The importance of case managing extradition hearings and appeals to ensure that extradition requests are deal with expeditiously is established by the Criminal Procedure Rules.

The second assurance

44. The second assurance is in the letter dated 22 September 2017 and was provided to the Court on the 25 September 2017, which was the first day of the final hearing before the District Judge.

45. In our judgment the District Judge was entitled to say that the second assurance had come too late to be admitted at the final hearing. This was a case management decision. The second assurance was not provided on time. Although Mr Summers is right to say that it was only 5 weeks late, it was handed in on the day of the hearing in circumstances where the issue had been live for over a year. Admitting the second assurance would have created an unnecessary diversion from the points which were being made on evidence which had been properly adduced at the hearing.

46. Further there was no good reason advanced for the failure to provide the second assurance on time. Looking at the case as a whole it was perfectly possible for the District Judge to have the hearing and decide the various issues then before the Court. This approach was permissible even if, before ordering the discharge of Mr Chawla, the District Judge ought to have adjourned so that an assurance could be provided within a reasonable time, see issue 3 below.

Issue 3 – After giving judgment the District Judge should have adjourned the proceedings to permit the Government to provide an assurance before ordering Mr Chawla's discharge

47. Although we agree that the District Judge was entitled to exclude the second assurance at the final hearing, the position was different once the District Judge had made findings on the evidence adduced at the final hearing and set them out in the judgment. As appears from the principles relating to assurances set out above, assurances are not evidence and where a real risk of inhuman and degrading treatment is established, it is not appropriate to discharge the requested person but to enable the requesting state "to satisfy the court that the risk can be discounted" by providing assurances, see *Georgiev* at paragraph 8(ix). If such an assurance cannot be provided within a reasonable time it may then be necessary to order the discharge of the request person.

48. The District Judge did not take that step in this case. There does not appear to be any good reason for not taking this step in accordance with the guidance set out in *Georgiev*. This is particularly so given that it was common ground that the Government might make a further extradition request for Mr Chawla which would have added to the cost and caused delay. However, there is now further evidence which this court needs to assess before determining the proper disposal of this appeal.

Issue 4 – the order to be made by this Court

49. We have now been provided with further material by both sides. It is common ground that all of this material should be admitted on appeal as it either post-dates the hearing before the District Judge, or could not have been obtained before that hearing.

50. There is material showing that the capacity at Tihar prison (notwithstanding construction

works at some prisons) remains at 10,026 prisoners, but the prison population has increased to 15,161. There is evidence showing that the Courts in Delhi are investigating outbreaks of violence at Tihar prison, and there is material suggesting that recordings from CCTV cameras installed at the prison to ensure that there would be an accurate record of what occurred during outbreaks of violence are not available to those Courts. There are reports of intra-prisoner violence in High Security wards. There is some evidence suggesting that the Tihar prison board of visitors had not been visiting.

51. In circumstances where we have admitted further evidence, and where the Government submits that the second assurance will meet any findings that this Court has made about real risks of inhuman and degrading treatment, we have looked at the terms of the second assurance to see if it will prevent a real risk of inhuman and degrading treatment. The second assurance provides that "Mr Chawla would be detained within the Tihar jail complex … This applies to any period of pre-trial detention and, in the event of a prison sentence, upon conviction by a competent Court. Specific arrangements will be in place … (i) Jail No.1, Ward No.9; (2) Jail No.2, Ward No.5; and (iii) Jail No.3, Ward No.4 have been identified for lodgement … The cells measuring approximately 21x8x11 feet in dimensions with adequate personal living space. Mr Chawla will enjoy a minimum of 3 sq. meter of personal space … (ii) Mr Chawla will be locked up for the night at the time of sunset … (iii) Mr Chawla will be provided blanket and bed sheet for the purpose of using it as mattress and bedding. In case there is medical requirement, mattress and bedding will be provided to him as per recommendations of the Medical Officer … (viii) in relation to prison staff/guard numbers, the location of Mr Chawla's cell and exercise areas are, and will remain, sufficiently staffed to provide appropriate and effective levels of security and protection for inmates …". Other sub-paragraphs dealt with drinking water, toilet and washing facilities, food and medical facilities. The assurance letter reported on the number of medical staff and noted that 15 more medical practitioners were likely to join the prison.

52. As was noted by Ms Malcolm, the second assurance does provide a guarantee about space, but the attached photographs do not identify whether what is shown is a cell (which seems likely) or a ward. The second assurance does not identify whether any of the wards are high security wards, where the evidence shows that there is a real risk of violence. Further the assurance does not identify whether the toilet facilities will be shared, and if so what those facilities will be. The apparent under recruitment of medical officers is a cause for concern, given the reported difficulties with medical treatment of other extradited persons and the permissible findings of the District Judge, but we have noted the assurance that Mr Chawla will have speedy access to the prison medical facilities if needed.

53. In these circumstances we conclude that there remains a real risk that if Mr Chawla is extradited and held at Tihar prison that he will be subjected to inhuman or degrading treatment contrary to article 3 of the ECHR.

Conclusion

54. In these circumstances if matters remain as they are the appeal will be dismissed. However it is apparent that it will be possible to meet the real risk of article 3 treatment by offering a suitable assurance that Mr Chawla will be kept in article 3 compliant conditions in Tihar prison before, during trial and, in the event of conviction and sentence of imprisonment, after trial. Such an assurance will need to: address the personal space available to Mr Chawla in Tihar prisons; the toilet facilities available to him; identify the ways in which Mr Chawla will be kept free from the risk of intra-prisoner violence in the High Security wards; and repeat the guarantee of medical treatment for Mr Chawla.

55. Therefore, following the approach set out in *Georgiev* at paragraph 8(ix) and (x), we stay the appeal to give the Government an opportunity to provide further assurances. We require a response from the CPS within 42 days of the date of the handing down of this judgment. We give permission to apply to both parties as regards the wording of any further assurances, the timing for their production, and the final disposal of this appeal.