IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT
[2018] EWHC 794 (Admin)

CO/1339/2018

Royal Courts of Justice
Monday, 9th April 2018

Before:

MR JUSTICE KERR

B E T W E E N :

BOGDAN-ALEXANDER ADAMESCU — Applicant

- and -

CROWN PROSECUTION SERVICE
(ON BEHALF OF BUCHAREST APPEAL COURT
FIRST CRIMINAL DIVISION) — Respondent

MR HUGO KEITH QC (instructed by Mishcon de Reya) appeared on behalf of the Applicant.

MR TIM OWEN QC and MR DANIEL STERNBERG appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE KERR:

1 This is a bail application by the applicant, Mr Adamescu, which was brought on 29 March 2018 as a Part 8 Claim in the Queen's Bench Division. I have transferred it to the Administrative Court, without objection from any quarter.

2 The applicant is a German national whose family is of Romanian origin, living with his wife and children in London where he has lived since 2012. He faces extradition to Romania under a European Arrest Warrant dating from 2016. He is wanted there to stand trial for his alleged part in bribing two judges in Romania in June and December 2013. In Romania, bribing judges is a criminal offence. It carries a maximum sentence of five years imprisonment.

3 Mr Adamescu has challenged his extradition to Romania on various grounds including political abuse by reference to Article 6 and prison conditions, relying on Article 3. A judgment on that matter is awaited from District judge Zani at Westminster Magistrates' Court this Friday, 13 April 2018. The district judge is expected to decide whether or not Mr Adamescu should be extradited or not. An appeal from that decision lies to this court.

4 Since his arrest under the European Arrest Warrant, Mr Adamescu had been on conditional bail. That bail was withdrawn by District Judge Zani of his own motion on 2 March 2018 in the light of a document produced to the court by the applicant, through his lawyers, on 31 January 2018, which it is now agreed is a forgery.

5 The Crown Prosecution Service ("CPS") which represents the requesting court in Romania ("the respondent") initially took a neutral stance on the issue of bail after the forged document was produced. The CPS now opposes bail, through Mr Owen QC and Mr Sternberg. The applicant was unsuccessful at two subsequent hearings on 6 and 23 March 2018 in persuading the District judge to reinstate his bail. Hence this application.

The Law

6 Although I was told quite a lot about the slightly unusual procedural course taken before the district judge, this is not an appeal and I am not sitting as a reviewing court. The hearing is *de novo*, as both parties agree.

7 The application is made under section 22(1A) of the Criminal Justice Act 1967, as amended. The effect of that provision is to apply to extradition proceedings the test applicable under section 4 of and Schedule 1 to the Bail Act 1976, as amended. Therefore, as in any ordinary bail application arising in criminal proceedings, the starting point under section 4(1) is that:

> "(1) A person to whom this section applies shall be granted bail except as provided in Schedule 1... ."

8 The relevant parts of Schedule 1 are in paragraph 2(1):

> "The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would -
>
> (a) fail to surrender to custody, or
>
> (b) commit an offence while on bail, or

(c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person."

That is as much as I need say about the law.

The Facts

9 Turning to the facts briefly, and without rehearsing all the detail, the alleged bribery of the two judges occurred, according to Romania (the requesting state) in June and December 2013. It is alleged that the applicant was party to payments of 10,000 and 5,000 euros in separate sums to two separate judges, both of the Seventh Civil Division of the Bucharest Court. I was told that both judges have since been imprisoned in Romania.

10 In Romania in November 2013, a body called (in English translation) the Anti-Corruption Directorate began an investigation into alleged complicity in bribery of a number of judges. In May 2014, the applicant's father's house was searched, as were the offices of the Nova Group, which in succession to his now late father, the applicant owns and controls.

11 The Nova Group is a business organisation that owns and publishes the newspaper **România Liberă** in Romania. The background to the present proceedings is that it is said that newspaper has expressed opposition to and become a thorn in the side of the governing party in Romania.

12 In February 2015, Mr Adamescu's late father, Daniel Adamescu, was convicted of bribing the two judges and sentenced to four years and four months' imprisonment. A subsequent appeal against that conviction failed and he died in prison last year.

13 In December 2015, Nova Group Investment BV (the Dutch holding company of the Nova Group) notified Romania of a dispute under a bilateral investment treaty between Romania and the Netherlands. The dispute is between Nova Group and the state of Romania and arises from the circumstances in which an insurance company formerly owned by the Nova Group called Astra, had ceased trading.

14 In March 2016, the Anti-Corruption Directorate commenced criminal proceedings against Mr Adamescu in relation to the same bribery allegations of which his father had been convicted. In May 2016 a warrant for his arrest was issued by the Bucharest Court of Appeal.

15 After an unsuccessful challenge to that warrant, in June 2016, a European arrest warrant was issued from the Bucharest Appeal Court, pursuant to which Mr Adamescu was arrested in this country on 13 June 2016. He was at that stage not incarcerated, but granted bail subject to conditions including the surrender of his passport.

16 In the parallel arbitration proceedings in March 2017, an international arbitral tribunal sought unsuccessfully to prevent Romania from seeking to extradite Mr Adamescu on criminal charges. That matter is ongoing.

17 Mr Adamescu has, quite properly and as is his right, taken every point he can, with assistance from his legal representatives, to avoid being extradited under the warrant. A hearing in the extradition proceedings took place from 27 to 30 November 2017, at which eight expert (or mainly expert) witnesses gave evidence about political and prison conditions in Romania.

18 By that stage, the magistrates' court had before it a letter of 15 November 2017 from the Romanian authorities, providing certain assurances in relation to prison conditions there. Not surprisingly, the reliability of those assurances was and remains a major issue in the extradition proceedings that were heard in late November 2017.

19 I have heard evidence today from the applicant that he had a meeting in late November or early December, in North Finchley, at which there was a discussion about the reliability of those assurances. I will come back to that, but I will just say I do not find it in the least surprising or unusual that the applicant would wish to do anything he could to discredit the reliability of the assurances in the letter of 15 November 2017.

20 At the end of January 2018, there was to be, the next day, a further hearing in the extradition proceedings. On 30 January, a letter purporting to come from an official organ of the Romanian state was in the possession of the applicant's lawyers; and at the hearing the next day was produced to the CPS's representatives for the purpose of the applicant relying on it in the extradition proceedings.

21 The letter appeared on its face to undermine the reliability of the assurances given by Romania on 15 November 2017 because it appeared to suggest that in open, or semi-open, prison conditions, the amount of space per prisoner would be less than that required to meet the Article 3 threshold, as decided in other cases. It was, therefore, if genuine, a useful letter from the applicant's point of view.

22 On 31 January 2018, the proceedings were adjourned to enable the CPS to make enquiries about the letter. The answers to those enquiries, received by the CPS in about early February 2018, denied the authenticity of the letter and denied that it had been sent by any official Romanian body to the newspaper **România Liberă**. The position of the CPS was therefore that it was not genuine.

23 There was to be a further hearing on 2 March 2018. The day before that hearing, the applicant's lawyers, Mishcon de Reya, wrote to the CPS as a matter of courtesy, informing that the applicant would not provide a written statement about the letter, but that leading counsel would respond to the substance of it in court. For internal purposes, a draft proof of evidence - although headed "draft", it was in fact signed by the applicant - was prepared and signed on the same day, 1 March 2018.

24 It is a long and detailed document, even the summary of which in Mr Keith's skeleton argument occupies several pages. The gist of it, without going through the detail, is that the applicant accepts that the letter is a fake; is mortified that he had ever believed it to be genuine; would not have instructed his lawyers to rely on it had he known it was a fake; and is completely innocent of any part in procuring it.

25 At the hearing on 2 March 2018, the district judge was told that the applicant no longer relied on the letter as genuine. On that occasion, the district judge withdrew his bail. There is no doubt that that was because of the letter. At the hearing on 2 March, the applicant's representative was Mr Ben Watson of counsel. He disavowed reliance on the letter, accepting on behalf of Mr Adamescu that it was not a genuine document.

26 I have been taken through the procedural stages of that and subsequent hearings before the district judge, but as this is a *de novo* proceeding, I do not find it necessary to go through the twists and turns of those three hearings on 2, 6 and 23 March 2018. It is sufficient to say

that since 2 March, the District judge has been of the view, contrary to the neutral stance of the CPS as it then was, that the applicant should not be admitted to bail.

27 I should say, however, that after some uncertainty about whether the applicant was going to give oral evidence or not, he did so. That process included production to the district judge of the document referred to as his proof of evidence, which he had signed on 1 March 2018. He was cross-examined by Mr Owen for the CPS. I have been taken to some passages in the note of his evidence, both in-chief and in cross-examination, and I have looked through the whole of the note dealing with his oral evidence.

28 I began hearing this bail application late last week and it has been adjourned to enable the applicant to attend and give oral evidence to this court, which he has done this morning. His evidence is consistent with what is said in his proof of evidence and, broadly, with what he said before the district judge in the magistrates' court. I will not rehearse all the points made during his oral evidence today.

29 Concentrating only on the most important parts, I return to the meeting that he spoke of in late November or early December 2017. At that stage, there was no suggestion of any fake document yet having been produced. He gave evidence that he had a discussion in North Finchley at that time with a Mr Garleanu, a journalist employed by Nova Group, working for **România Liberă**.

30 Mr Adamescu's evidence was that Mr Garleanu suggested that he (Mr Garleanu) and another gentleman referred to as "X" should meet Mr Adamescu; and that Mr Garleanu indicated that X was an expert on Romanian prison conditions. They met. During the discussion, according to the applicant, extreme scepticism, even derision, was expressed by X about the reliability of the assurances given in the letter of 15 November.

31 The applicant's evidence was that X did not say very much and gave only a first name, but did say that it would be implausible and even unlawful for Romania to abide by the assurances given in the letter of 15 November 2017; and that the applicant's impression was that X was more interested in recreation and shopping in London than any more serious purpose.

32 The applicant gave evidence that later, when the document now recognised as a fake came into the applicant's possession, he had been told on 30 January 2018 by his newspaper's editor, Mrs Iovanel, that the letter had arrived at **România Liberă**. He gave evidence about the process whereby it was transmitted electronically to him on two different occasions. The applicant said he was excited by the letter because it appeared to give the lie to the assurances in the 15 November letter from the Romanian authorities.

33 He said he asked Mrs Iovanel if she had faith in the authenticity of the document, and that she said categorically that she did have. He said that he accepted that assurance, relied on the professionalism of his newspaper staff and was not alerted to anything that might have caused him to believe it was a forgery. He repeated his insistence that he had had no part in the production of the letter, nor had he had the idea of producing it. He believes from conversations with his staff that it emanates from within the National Prisons Administration of Romania.

34 It was put to him in cross-examination today, as it was before the district judge, that the applicant had given evidence before the district judge that was at odds with the concession made by his lawyers that the document was a fake; namely, he had given evidence saying he did not know whether it was or not. He said, in answer to the questions from Mr Owen QC

today, that it would be necessary to ask the National Prisons Administration of Romania how it was produced. He, for his part, had no idea. He suggested that it might be a set-up by the Romanian government, and that he did not know whether it was true or not, and that there were many possibilities that could explain how it came into existence.

35 He also gave evidence on different topics, including his family ties in this country, his reasons for wishing to live here, his assets and the ability of associates to provide limited further sureties not exceeding £35,000. He confirmed that he would be willing to abide by a condition that his children's passports be surrendered, his own having already been surrendered.

36 In support of the bail application, Mr Keith QC submitted that there was wholly insufficient material before the court to provide the substantial grounds needed to defeat the *prima facie* right to bail. He submitted that the applicant's family ties in this country are strong; his children attend school here; he had never before sought to avoid the extradition proceedings but was concerned to fight them vigorously; he had attended at court religiously on every occasion; and the arbitration proceedings are at risk of collapse without him because he is the central figure in those proceedings which are at the stage of disclosure of documents.

37 Mr Keith submitted that there was no basis for disbelieving the applicant's testimony on affirmation that he played no part in procuring the forged document; he is a man of good character with no convictions in any country, and his account is uncontradicted. Mr Keith suggested it would be far-fetched to suppose that the applicant would involve himself in a scheme to produce false assurances in order to pervert the course of justice in the extradition proceedings and that, even if it were otherwise, that would not give rise to substantial grounds for supposing that he would fail to surrender. Flight would be difficult, if not impossible in the absence of a passport; he is subject to stringent curfew and reporting restrictions, and would have to resort to subterfuge if he were to flee.

38 For the CPS, Mr Sternberg and Mr Owen, through Mr Sternberg's written and oral submissions at the previous hearing, submit to the contrary. They relied on the following points: (1) the offences founding the European Arrest Warrant are very serious; (2) this is shown by the maximum five year prison term for the offence of bribery under Romanian law; (3) the applicant has persistently refused or declined voluntarily to name the person called X who is said to be relevant to an investigation into how the false letter was produced.

39 The applicant, they point out, is the only person that would have benefited had the court accepted it as genuine. In short, that his explanation is implausible to the point where even now he has continued to suggest the document may be genuine, in the teeth of a concession by his lawyers that it is not. (4) They submit that the arbitral proceedings are a matter of little weight; it is inherent in criminal proceedings that other civil proceedings may thereby be disrupted; and (5) that the application is in a sense premature since judgment from the district judge is expected this Friday.

Reasoning and Conclusions

40 Firstly, I accept Mr Keith's point made last week that the offences as they are now charged are no more serious than they were at the start of the extradition proceedings in 2016. At the very most, production of the false document might conceivably aggravate any sentence passed in a Romanian court if the applicant is extradited, but that would have to be within a band from the six month minimum sentence to the five year maximum sentence if the

applicant were convicted of complicity in bribing the judges. Those offences are serious, but they have always been, and the CPS did not think to oppose bail until recently.

41 Secondly, I accept that the applicant has not breached his bail before and that even after the false document was produced, it was the district judge rather than the CPS who made the running in withdrawing bail. The CPS and therefore the requesting court (effectively its client) are late converts to the district judge's position, adopted by him from 2 March 2018 and since.

42 Thirdly, I accept also that the applicant has shown no propensity to flight thus far, and that flight would, in practical terms, be difficult. His partner and children are settled here. He has, I understand, abided by his bail conditions. He has attended court hearings even after the document was exposed as a forgery. Having no passport, he would have to go underground if he were to attempt flight.

43 Fourthly, I attach little weight to the position in the arbitral proceedings. I agree with Mr Sternberg that they have to take second place if it is otherwise appropriate to deny bail.

44 Fifthly, I do not think that the prematurity point made by the CPS is a good one. The right to bail is either displaced or it is not. I have to decide that issue on the evidence before me today.

45 Therefore, the question of bail really turns on the central point, which is the effect of the applicant having produced to the court the forged document. I accept that having received expert advice, he was initially reticent about answering questions on the subject. He did not do so on 2 March, nor on 6 March. An elaborate evidential procedure was undertaken - and I do not suggest there is anything improper whatever about this - by his representatives in an attempt to produce an account for the court, as it were from behind a curtain, from the anonymous X.

46 That account was intended to exculpate the applicant from complicity in producing the false document. To my mind, it does not succeed in doing so. It was a poor substitute for frank, direct and prompt evidence on the point. I also accept the important point that no one but the applicant apparently stood to benefit from producing the false document to the court. I therefore share to a considerable extent the district judge's scepticism about the applicant's account that he was an innocent dupe who accepted the document in good faith.

47 Such evidence as I have about the document and the circumstances in which he came to rely on it and then subsequently disavow it, itself amounts to a basis for gainsaying his account. That circumstantial evidence is, in my judgment, strong. He produced the document; he stood to benefit from it; it would have helped his case greatly on prison conditions in Romania. He accepts that it was received via conduits working for the newspaper which, through his company Nova Group, he owns and controls. It took him several weeks to reach the point of being prepared to answer questions about it orally, on affirmation.

48 I am particularly concerned that there was no obvious reason, before the false document came to light, that would require the presence of X in London in about early December 2017. It is of course correct that the applicant had every reason to discredit the Romanian assurances. It is true also that X could have been interested more in shopping and recreation than anything else. Nevertheless, I find it strange indeed that he appears in the story before the fake letter was ever apparently conceived and is later, conveniently, connected with its alleged undisclosed source within the Romanian prison system.

49 I also find it difficult to accept that the applicant would have valued the opinion of his editor, Mrs Iovanel, on the authenticity of the letter, and that she would yet have been so completely wrong in validating it to him. She is clearly an experienced senior journalist and editor to whom the patent inadequacies on the face of the letter itself would or ought to have been easy to expose with minimal enquiry.

50 Although nothing is impossible, I do not think there is any evidence to support the suggestion that the letter might result from a set-up of the applicant by the Romanian government. That leaves the possibility that the applicant was being unwittingly helped by misguided dishonest people. Although that possibility exists, on the evidence I have it is not at all likely to be the true explanation. Those are my findings on the evidence. I consider that there are substantial grounds for believing that the applicant is complicit in the production to the court of a forged document for the purpose of improving his case.

51 Mr Keith submits that even if that is what the court decides, it does not follow that a propensity to flight exists here. I have thought about this carefully and have considered with care the previously imposed bail conditions and those offered now, including the offer of increased sureties and surrender of the applicant's children's passports. I have come to the conclusion that there are substantial grounds for believing that the defendant, if released on bail, would fail to surrender or interfere with witnesses or otherwise obstruct the cause of justice.

52 I am not saying that he necessarily would, but I have before me substantial grounds for believing that he would, if released on bail, do either or both of those things. I have before me strong evidence that shows a willingness on the applicant's part to resort to criminal as well as lawful ways of resisting extradition. Flight is another such. Logically, if unlawful means are under consideration, flight, though a last resort and difficult in practice to achieve, would also be likely to be under consideration.

53 I therefore have evidence that two things coalesce: a greatly heightened temptation and motive to flee and evidence of a willingness to use unlawful means to escape extradition. The coalition of these two things is a recipe for flight, despite the difficulties it would entail. It is, at present, the only way of escaping extradition that the applicant has, should the case go against him on Friday. He did not leave it to chance if he produced the forged document or was party to its production, as I believe is more likely than not. By the same reasoning, I think there are substantial grounds for believing that he would not do so this time either.

54 For those reasons, I do not accede to his bail application. That does not mean that the district judge will not be able to reconsider it, if and when there is a material chance of circumstances.

CERTIFICATE

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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

admin@opus2.digital

This transcript has been approved by the Judge.