

Gomes v Brazilian Government

CO/3831/2018

High Court of Justice Queen's Bench Division the Administrative Court

10 October 2018

[2018] EWHC 2860 (Admin)

Before: The Honourable Mr Justice Supperstone

Wednesday, 10th October 2018

Judgment

Mr Justice Supperstone:

1 This is a bail application in extradition proceedings brought by Mr Gomes, a Portuguese national, who is subject to a provisional accusation extradition request issued by the government of Brazil.

2 Following his arrest on 18 September of this year, he made his first bail application on 19 September, which was refused. He made a second bail application on 26 September, which was again refused. Bail was refused on both occasions on the ground that the Court was satisfied that there are substantial grounds for believing that the applicant, if released on bail, would fail to surrender to custody.

3 The applicant is sought in relation to an allegation that between 11 January 2011 and 11 June 2011 he conspired with others in Brazil as part of an organised criminal group to traffic illegal drugs, cocaine, in large quantities from Brazil to Europe.

4 Mr Hawkes, who appears for the applicant, submits that the paucity of the information about the alleged conduct undermines any assertion that there are substantial grounds to believe that the applicant would fail to surrender. Mr Hawkes observes that in the request, other than stating that he conspired with others as part of an organised criminal group, there is no further information as to his role in the offences. The request refers to "vast quantities of cocaine", but the actual quantity of drugs is not stated and there is no information about the destination of drugs other than Europe, nor is it alleged whether the drugs were in fact delivered. However, additional information provided by the Brazilian authorities has confirmed that, according to an accomplice arrested in Brazil, Mr Gomes was responsible for financing the travel costs of the organisation and was the owner of 579 grams, liquid mass, of cocaine. That equates to about half a

kilo of cocaine.

5 Mr Hawkes reminds me that the applicant has a general right to bail, he is of good character and has lived in the UK for the last five years, residing with his sister and her children, and that he has a number of other close relatives the UK. He has been in continuous employment in the UK, primarily working, as Mr Hawkes emphasises, as a security guard.

6 Referring to the fact that the applicant gave his then home address to the police in Portugal in 2011 and that he remained at that address for a further two years and that he has returned frequently to Portugal, Mr Hawkes submits that all that is inconsistent with someone who had anything to fear from the authorities. There is no evidence that he fled the jurisdiction.

7 Mr Hawkes also refers to the extreme concern about Brazilian prison conditions, which will form the basis of Art.3 ECHR submissions in due course. He does, however, contend that this is relevant at this stage, because there are grounds for thinking that assurances may not be forthcoming from the Brazilian government.

8 However, as Mr Sternberg for the respondent has rightly observed, the applicant is sought for a serious offence.

9 I reject the submission as to the paucity of information about his alleged conduct. I do not accept that the case against the applicant can at this stage be described as weak. His role is particularised, as I said, as the owner of the drugs and an organiser and funder of travel to carry out the conspiracy. If convicted, he is faces imprisonment for up to 25 years. Mr Sternberg has estimated that if he was convicted of this offence in England, it would carry a sentence of about three years.

10 Plainly, the applicant has, as Mr Hawkes has demonstrated, community ties, but he is a single man with no children and, that being so, I do consider his community ties in the present context to be limited.

11 He has offered cash security in the sum of £5,000. I accept Mr Hawkes' submission that this is not an insignificant sum for him and his family to raise. Mr Hawkes has sensibly suggested that there could be additional bail conditions.

12 Nevertheless, having regard to the seriousness of the offence and the particulars of the case against him, I am satisfied that there are substantial grounds for believing that Mr Gomes, if released on bail, whether subject to conditions or not, would fail to surrender to custody. The Art.3 argument, in my view, is a submission that can be made, as no doubt it will be, in due course in the extradition proceedings.

13 For the reasons I have given, this application is refused.

