

Noel McPhillips v Judicial Authority of Belgium

[2018] EWHC 2775 (Admin)

Before: Mr Justice Dove

Thursday, 24 May 2018

Representation

Mr J Swain (instructed by Sonn Macmillan Walker) appeared on behalf of the Appellant.

Mr A Dos Santos (instructed by the Crown Prosecution Service, Extradition Unit) appeared on behalf of the Respondent.

Judgment

Mr Justice Dove:

1 This is an application for bail on behalf of the Appellant, Noel McPhillips. He first appeared before the Westminster Magistrates' Court on 27 March 2018 along with his partner, Miss Hathley, in respect of a European Arrest Warrant. Miss Hathley was granted conditional bail on that occasion.

2 Subsequent bail applications have been made and refused on Mr McPhillips behalf, the most recent on 9 May 2018 when the application was refused on the basis that he would fail to surrender to bail based upon the nature and seriousness of the offences which he faced, and the lack of community ties. There is a final extradition hearing in this matter, listed for 13 June 2018.

3 A European Arrest Warrant, which underpins these proceedings, relates to a number of offences which involve the theft of trailers or plant vehicles over a significant period of time from autumn 2016 until 28 February 2018. Without going through each of the alleged offences they all involve use of a tractor unit to pull a trailer which is either itself the object of the theft or, alternatively, is a trailer on to which has been loaded vehicular plant in the form of excavators or the like, which had then been towed away and stolen.

4 The nature of the investigation of the matter has involved tracing the tractor units concerned, together with an associated Audi A4 vehicle, through tracing the network of ANPR evidence, CCTV evidence, links to mobile phone handsets and email and other mobile phone traffic. Linkages have been made between the appellant, his partner, Miss Hathley, and the appellant's brother. In particular, the

appellant and his brother, it is alleged were involved in the movement of the vehicles and the trailers, which led to the offences which are, it is contended, all linked, and all associated with, effectively, the same criminal enterprise involving the theft of valuable trailers and excavators and their conversion once removed from Belgium where the offences were committed. Valuations are not provided within the European Arrest Warrant in relation to each of the charges, but it is clear from those valuations that are provided that the ultimate value of the goods stolen is likely to amount to several hundreds of thousands of Euros in aggregate.

5 The offending, it is said, culminated on 28 February in a car chase between the Belgian police and the Audi A4 vehicle being driven, it is said by the police, by the appellant down a motorway at high speed during which various items were thrown out of the vehicle and following which the Audi A4 vehicle was able to make good its escape. ANPR evidence subsequently demonstrated the existence at that time of the Volvo tractor with an associated number plate in the area on February 27 and 28. It is contended that the car chase demonstrates further that the appellant was unwilling to be answerable for his role in the offending, or to co-operate with the investigation of these offences.

6 On behalf of the appellant, Mr Swain draws attention, correctly, to the fact that this is an accusation warrant and, therefore, there is a presumption in favour of bail. He does not, correctly, contend other than the offences with which the European Arrest Warrant is concerned are serious offences. However, he submits that there is a basis upon which bail can properly be granted. He has provided, in the course of his written submissions, details as to proposed conditions which he submits would be capable of obviating the risk that the appellant would fail to surrender to bail. Those conditions include a condition of residence reporting an electronic monitored curfew associated with the surrender of travel documents, and conditions preventing him accessing any airport or other venue of international travel. He will be obliged to keep his mobile phone switched on. Mr Rukov, who is the father of his partner, Miss Hathley, is prepared to provide a security of £30,000 to back the bail. All of those matters, it is submitted, give rise to guarantees and a secure basis for concluding that the appellant would not abscond. In addition, Mr Swain relies upon the community ties which the appellant has and which are evidenced from various sources including those with whom he has worked, and a sports club with which he is associated, as well as, perhaps most pertinently, his partner and her family. His partner has suffered from mental ill health and he has played a role in supporting her through those difficulties. There are references relied upon by Mr Swain as to the character of the appellant and, finally, he submits that when the antecedent history of the appellant is examined, there is no evidence previously of him ever having abused his bail or committed any offence whilst on it.

7 I accept that all of those matters are relevant to the question of whether or not bail should be granted and thereupon the considerations under the Bail Act 1976

which apply in connection with this application. I also accept, in the light of Mr Swain's careful and coherent submissions, that they are supportive of a grant of bail in this case. However, there are other factors of considerable significance which, in my judgment, outweigh the presumption in favour of bail in this case, and those supportive factors which I have already outlined. First and foremost, the allegations which the appellant faces, which are specified in the European Arrest Warrant are first evidenced, albeit in brief form, so that the nature and extent of the case, based upon objective and verifiable evidence in the form of matters such as ANPR evidence, and CCTV footage, as well as mobile cell site analysis, show that there is a case of some strength which he faces in relation to the sequence of offences which underpin the European Arrest Warrant. That leads to the next factor which is, in my judgment, of significance, namely that the offences are numerous and cover a significant period of time. That has a bearing on the fact that, coupled with the extensive value of the goods involved in these offences, if the appellant is convicted of these matters he faces a very significant custodial sentence. Those are all factors which, in my judgment, carry very significant weight in considering whether or not in his case there is a likelihood of his failure to surrender to custody. I am satisfied that such a likelihood exists in his case.

8 When one takes account of all of those factors, bearing upon the nature of the offences to which the European Arrest Warrant is related, coupled with the evidence which has to be taken at face value from the European Arrest Warrant, that he was directly involved in a car chase where he sought to escape from the attentions of the Belgian authorities driving a car which, in accordance with the information and evidence within a European Arrest Warrant, was intimately involved with the pattern of offences with which the charges are concerned. Thus, I am not satisfied that this is a case in which it would be appropriate to grant bail.

9 I bear in mind what is said by Mr Swain in relation to the fact that his co-accused and partner, Miss Hathley, has been admitted to bail subject to stringent conditions. However, her case has different considerations bearing upon the issue. She is not as significantly involved in these offences as is the appellant, nor is it suggested that she was directly involved in the car chase to which I have alluded. In addition, she has particular features of her personal circumstances which, no doubt, will have been properly taken into account in taking the decision that it was appropriate for her to be admitted to bail. I do not therefore consider that the fact that bail was granted in her case is of any significant weight in assessing the particular circumstances bearing upon the case of the appellant. For all of those reasons I am satisfied that the appellant should not be granted bail and this application should be refused.

MR JUSTICE DOVE: Are there any other matters with which I could assist?

MR SWAIN: No, my Lord.

MR DOS SANTOS: No, my Lord.

MR JUSTICE DOVE: Thank you both very much indeed, both for your very helpful written submissions and for your succinct and focused oral submissions today. Thank you very much indeed.