

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

[2022] EWHC 3433 (Admin)

No. CO/3817/2022

Royal Courts of Justice

Wednesday, 26 October 2022

Before:

MR JUSTICE CHAMBERLAIN

B E T W E E N :

DIRECTOR OF PUBLIC PROSECUTIONS Applicant

- and -

PATRICK TRISTRAM BIJOU

(AKA H.E. SIR DR PATRICK TRISTRAM BIJOU) Respondent

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MR T RAINSBURY (instructed by Crown Prosecution Service) appeared on behalf of the Applicant.

MR B HONE appeared on behalf of the Respondent.

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JUDGMENT

MR JUSTICE CHAMBERLAIN:

1 This is an application by the Director of Public Prosecutions for a property freezing order under s.245A of the Proceeds of Crime Act 2002. Before addressing the substance of the order, the first issue which I have to determine is the application made by Mr Barnaby Hone, on behalf of the respondent, that the application should proceed in private or, alternatively, if it proceeds in public, for an order that the respondent be anonymised.

2 I say at the outset that I reject both applications and I will explain why in terms which refer to the respondent and his identity.

3 The proper approach to issues of privacy and anonymity in applications of this kind is set out by Fordham J in his judgment in DPP v Briedis [2021] EWHC 3155 (Admin) [7]-[8]. Fordham J noted there that CPR PD 11.1 provides that certain hearings are to be held in private unless the judge directs otherwise. Hearings of this kind, that is to say applications for Property Freezing Orders, are not among those listed in that paragraph. Fordham J went on to recognise that a Property Freezing Order is an interim order, being sought at an early investigative stage so far as civil proceedings are concerned; that the threshold for the grant of a PFO is a relatively low one, in essence a good arguable case that the identified property is or includes property obtained through unlawful conduct or its transaction or placement; that the respondent's Article 8 rights are in play; and that the PFO

does not engage the higher ranking Article 10 interests which apply to disclosure of what takes place in the criminal courts. However, he was nonetheless satisfied that the presumptive starting point was that proceedings should take place in public. He noted that the public could be expected to understand that simply because an individual had been made the subject of an interim order of this kind did not justify adverse conclusions about them. I apply that approach here.

4 In this case, Mr Hone argues that there are two particular distinguishing features which ought to justify privacy in this application and/or anonymity. The first such feature is that he (Mr Hone) has only been instructed relatively recently and, because of the limitations imposed on the respondent by previous account freezing orders, it has not been possible for the respondent to fully instruct counsel to respond to the substance of this order. I accept that that is a difference in principle. However, the fact remains that Mr Hone has been instructed and will be in a position to make some submissions in relation to this order during the hearing today.

5 The second distinguishing feature relied upon by Mr Hone is the high profile of the respondent. He is said to be somebody with an international presence who is a well-known businessman and has several other high profile positions. That consideration seems to me to cut both ways. Whilst, on the one hand, it may be said that the impact on the reputation of somebody of that character is greater than it would be on a less well known individual, it is also the case that the public is entitled to know what applications are being made in the courts of this country and the public interest in that knowledge may be said to be greater where the individual concerned has a higher international profile.

6 I have considered the remarks of the Divisional Court in *R (Javadov) v Westminster Magistrates' Court* [2021] EWHC 2751 (Admin) , which are broadly to the same effect (see, in particular, the remarks of Fulford LJ, with which Johnson J agreed, at paras 55 and 70).

7 It seems to me that, in all the circumstances, there is no cogent justification for holding this hearing in private and therefore the hearing will take place in public. I have considered separately whether I should impose restrictions requiring that any report of these proceedings anonymise the respondent and I consider that it is not appropriate to impose such restrictions.

8 One of the matters I have borne in mind in considering that question is the fact that there is already some reporting about the respondent, and I have seen that reporting in the bundle in the form of newspaper articles. I bear in mind that those newspaper articles refer to his previous criminal history and to various ancillary applications made by way of confiscation orders related to that previous criminal history. Nonetheless, the fact that that reporting exists is, to my mind, a powerful factor indicating that it is not appropriate to impose restrictions on the reporting of this application. Members of the public will bear in mind, as Fulford LJ and Fordham J pointed out, that this is only an early stage of investigatory proceedings and it may be, I know not at this stage, that the application for the Property Freezing Order is discharged at a later stage. Members of the public will bear that well in mind but they are entitled to know that the application is being made at this stage.

9 For those reasons, these proceedings will take place in public and there will be no anonymity order.

LATER

10 As I have already indicated, this is an application for a Property Freezing Order under s.245A of the Proceeds of Crime Act 2002 against Mr Patrick Tristram Bijou, also known as His Excellency Sir Dr Patrick Tristram Bijou and formerly known as Eric Fitzpatrick Danison.

11 The order is sought in relation to nine items of property as follows: (1) the freehold property situated at and surrounding Ffynnant, Llanarthney, Carmarthen, SA32 8JY, which is registered under title number WA675707/CYM117640/CYM546071/WA715828 and WA697365; (2) the Alfa Romeo Giulia Saloon with registration number CN17 WHH; (3) the balance standing to the credit of the TTT Moneycorp Limited account with customer ID 0021721565; (4) the balance standing to the credit of the Lloyds Bank account with account number 27960268; (5) the balance standing to the credit of the Lloyds Bank account with account number 28470468; (6) the balance standing to the credit of Wise Payments Limited local account with account number 8311162752; (7) the balance standing to the credit of Wise Payments Limited local account with account number 96000075323244; (8) the balance standing to the credit of Wise Payments Limited local account with IBAN Code BE10967216245904, and (9) the balance standing to the credit of Wise Payments Limited local account with account number 46584292. The estimated value of this property is between £3.47 and 3.87 million.

12 Mr Rainsbury, who appears for the Director of Public Prosecutions, has set out a very comprehensive skeleton argument which I have read. That details the legal framework under which Property Freezing Orders can be made. Section 245A entitles a court to make such an order where there is a good arguable case that the property to which the application and the order relates is, or includes, recoverable property and also, if any of it is not recoverable property, associated property (see s.245A(5)). "Recoverable property" is given a wide definition (see s.304(1) and 307(1)). "Property" is also broadly defined (see s.316(4)). Applications for Property Freezing Orders must be made by enforcement authorities (see s.245A(1)) and the DPP is such an authority for these purposes.

13 I have been referred to the case law which sets out the test for whether a good arguable case has been made out. In particular, I was referred to the judgment of Mustill J (as he then was) in *The Niedersachsen* [1984] 1 All ER 398, a case about freezing orders, where he equated "a good arguable case" to "a case which is more than barely capable of serious argument and yet not necessarily one which the judge believes to have a better than 50% chance of success."

14 I have also been referred to *Derby & Co. Limited & Ors v Weldon* [1990] Ch 48, another case about freezing orders, in which Parker LJ emphasised, at pp.57-58, that it was not part of the court's function to try to resolve conflicts of evidence as to fact. Those were matters which would be dealt with at a later stage.

15 More specifically on Property Freezing Orders under the Proceeds of Crime Act, the courts have emphasised that it is important to take a global approach to deciding whether property is recoverable (see *ARA v Jackson* [2007] EWHC 2553 (QB)), and that it may be proper to draw inferences (see *SOCA v Namli & Ors* [2013] EWHC 1200 [47]).

16 Mr Rainsbury reminds me that even if the statutory test is satisfied, the making of an order is in the court's discretion (see *SFO v Jamal* [2021] EWHC 1422 (Admin) [21]) and it is at this stage that the court must consider whether the order it made would interfere with rights under the European Convention on Human Rights, including those protected by Article 8 and Article 1 of Protocol 1, and if an interference is shown, whether such an interference is justified. It is also necessary to consider the risk of dissipation (see *Nuttall v NCA* [2016] EWHC 1911 (Admin) [19]).

17 As to the test for exclusions from Property Freezing Orders, this is provided for by s.245C, which enables the court to exclude property from the order when the order is made. Such exclusions may be made inter alia to meet reasonable living expenses (see s.245C(3)(a)) and to meet reasonable legal expenses that the person, the subject of the order, has reasonably incurred or will incur (see s.245C(5)(a)). As the statute makes clear, it is necessary when deciding whether to allow for such exceptions to have regard to the desirability of the person being represented in proceedings in which he is a participant (see s.245C(6)), and in that regard it is important to bear in mind the respondent's Article 6 rights to play a proper part in these proceedings.

18 I turn to the first question, which is whether the requirements of s.245 are met. The first question is whether the procedural requirements are satisfied. In short, they are. Although this application was made on short notice, Mr Bijou has been represented before me, albeit the scope of that representation has necessarily been limited because Mr Bijou says he does not have the funds properly to brief his lawyers at present. That is one of the matters I will need to consider when looking at exceptions to the order. Nonetheless, I am satisfied that proper notice has been given.

19 I turn next to the question of whether there is a good arguable case that the property is, or includes, recoverable property, applying the global approach which I have mentioned is required by the authorities and looking at the whole picture painted by the totality of the evidence. On that, Mr Rainsbury relies on a number of matters as follows: (1) all of the assets are held by Mr Bijou; (2) he has been convicted of numerous criminal offences, including offences of a serious and acquisitive nature. These offences span the years 1997 to 2019 and they include a conviction in 2010 for offences arising out of an advanced fee fraud which deceived individuals out of millions of pounds. The sentence imposed on that occasion was a sentence of five years' imprisonment and a Serious Crime Prevention Order for a further five years. (3) Mr Rainsbury submits that there is also a good arguable case that Mr Bijou has been involved in further unproven instances of advanced fee fraud between 2015 and 2019. Reference is made to witness evidence obtained from victims which Mr Rainsbury submits is corroborated by banking evidence. (4) The accumulation of over £3 million in assets, which Mr Rainsbury notes is inconsistent with Mr Bijou's declared income at the time, namely nil, and the fact that he has claimed state benefits from the Department of Work and Pensions during that period (the period being 2015 to 2022). (5) Mr Rainsbury relies on Mr Bijou's concealment of some of the assets from law enforcement and his conviction in 2019 for eight breaches of the Serious Crime Prevention Order imposed in 2010, including failures to notify the police that he was the proprietor of the house which forms item 1 of the property the subject of the current application, or that he was the registered keeper of the Alfa Romeo car which is item 2. (6) Certain additional matters are then relied on in respect of the house, the car, the Moneycorp accounts, the Lloyds accounts and the Wise accounts, and finally it is said that none of the exceptions apply.

20 In my judgment, these matters, taken together, are amply sufficient to satisfy the test of a good arguable case that the property is, or includes, recoverable property. I bear in mind that it is not sufficient on its own that Mr Bijou has apparently valuable property and has not declared any income for the purposes of tax. That is a factor which goes into the melting pot to be considered, alongside other matters. When taken as a whole, the matters relied upon by Mr Rainsbury and by the Director of Public Prosecutions, and further outlined in a detailed statement from Mr Watkins, seem to me, as I have said, amply to satisfy the statutory test at this early stage.

21 I then consider whether it is appropriate to exercise my discretion. I have considered in this respect the judgment of Fordham J in the case of Briedis, to which I have already referred when refusing the application for anonymity or a private hearing. It seems to me that any interference

with Mr Bijou's Article 8 or Article 1 of Protocol 1 rights is proportionate, providing that the order allows proper resources for Mr Bijou's living expenses and his legal expenses, insofar as they arise at this stage.

22 As to the risk of dissipation, there is, in my judgment, a sufficient risk to justify the making of the order at this stage. The respondent has been convicted of serious offences of dishonesty, as Mr Rainsbury submits, and both the liquid assets and the house and car could in principle be liquidated relatively easily. It seems to me that it is appropriate at this early stage for all the property identified in the application to be made the subject of a Property Freezing Order.

23 I turn then to the question of exceptions. There are two issues on which the parties were not, at the start of this hearing, *ad idem*. The first question is whether there should be any exception to the Property Freezing Order to cover legal expenses. At this stage, Mr Rainsbury submits that the proper procedure is to require Mr Bijou to submit a statement of assets and that any further exceptions ought to be considered only once that statement of assets has been produced. He points to the fact that there have already been account freezing orders made by the magistrates in Carmarthenshire at an earlier stage and no statement of assets has been provided in relation to those proceedings.

24 In my judgment, the appropriate disposition is as follows: Although there may be force in what Mr Rainsbury says, and although it may be the case that Mr Bijou has other assets from which he could discharge any necessary legal expenses, it is not clear at the moment, in circumstances where Mr Hone has no clear instructions on this point, that there are other assets available to discharge the legal expenses involved in drawing up the statement of assets. The statement of assets will not necessarily be a simple document. It is very important that that document is full and accurate, given the penalties which attach to the making of false statements in connection with such a document. It seems to me appropriate, therefore, that I should allow for the possibility that Mr Bijou has no other assets from which he can discharge his legal expenses.

25 For that reason, it seems to me appropriate that there should be an exclusion from the Property Freezing Order in the sum of £6,088 including VAT. I stress that that exclusion will allow him to pay up to £6,088 for legal expenses incurred in producing the statement of assets. That is a maximum figure and it seems to me a proportionate one that should be included in the order in this case.

26 I turn then to the question of living expenses. Mr Rainsbury points to the statement of Mr Watkins, in which it is said that Mr Bijou had available to him other sources from which his living expenses could be defrayed. It is unclear from the statement from what date the information comes and, therefore, unclear whether at present he has sufficient funds outside the assets covered by the Property Freezing Order to cover his daily living expenses. I have been handed during the course of this hearing a schedule of his outgoings, which includes a number of heads of expenses, which go considerably beyond what I would regard as reasonable living expenses. I have to do the best that I can and it will necessarily be a broad brush judgment.

27 In my judgment, the proper amount to allow for the time being, until such time as the statement of assets is produced and further consideration can be given to this matter by the court, the correct figure, in my judgment, is £2,000 per month for living expenses and that is the amount which I will allow. I would certainly not have been disposed to allow for some of the items on that list. It is not necessary to set them all out but any judge dealing with the next stage of these proceedings may wish to consider that list in due course.

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