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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT LEEDS
(HIS HONOUR JUDGE BAYLISS KC) [T20221179]

Case No 2024/02913/A5 & 2024/02782/A5
[2024] EWCA Crim 1373

Tuesday 8 October 2024

B e f o r e:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE MARTIN SPENCER

MRS JUSTICE CUTTS DBE

ATTORNEY GENERAL'S REFERENCE

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

R E X

- v -

NABEELA ANJUM

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Mr T Little KC appeared on behalf of the Attorney General

Mr A Iqbal KC and Mr B Batra appeared on behalf of the Offender

J U D G M E N T

(Approved)

Tuesday 8 October 2024

LORD JUSTICE HOLROYDE:

1. Nabeela Anjum, to whom we shall for convenience refer as Mrs Anjum, was convicted of two offences of failing to disclose information about acts of terrorism, contrary to section 38B of the Terrorism Act 2000. The trial judge, His Honour Judge Bayliss KC, sitting in the Crown Court at Leeds, imposed concurrent special custodial sentences, pursuant to section 278 of the Sentencing Code, of three years, comprising two years' custody and one year's further period of licence.

2. There are before the court two applications challenging that total sentence. His Majesty's Solicitor General believes it to be unduly lenient and accordingly applies, pursuant to section 36 of the Criminal Justice Act 1988, for leave to refer the case to this court so that the sentencing may be reviewed. Mrs Anjum contends that the sentence is manifestly excessive and accordingly applies for leave to appeal against her sentence. Her application has been referred to the full court by the Registrar.

3. The applications raise, among other points, an important issue as to the proper application of the Sentencing Council's definitive guideline in relation to offences contrary to section 38B of the 2000 Act.

4. It is convenient to begin by setting the framework within which that issue arises. Section 1 of the Terrorism Act 2000, so far as is material for present purposes, makes the following provisions as to interpretation:

"1 Terrorism: interpretation.

(1) In this Act 'terrorism' means the use or threat of action where

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- (a) the action falls within subsection (2),
 - (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and
 - (c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.
- (2) Action falls within this subsection if it —
- (a) involves serious violence against a person,
 - (b) involves serious damage to property,
 - (c) endangers a person's life, other than that of the person committing the action,
 - (d) creates a serious risk to the health or safety of the public or a section of the public, or
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.
- (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.
- ..."

5. Section 38B of the Act, so far as material, provides:

"38B Information about acts of terrorism

- (1) This section applies where a person has information which he knows or believes might be of material assistance —
- (a) in preventing the commission by another person of an act of terrorism, or
 - (b) in securing the apprehension, prosecution or conviction of another person, in the United Kingdom, for an offence involving the commission, preparation or instigation of an act of terrorism.

(2) The person commits an offence if he does not disclose the information as soon as reasonably practicable in accordance with subsection (3).

....

(4) It is a defence for a person charged with an offence under subsection (2) to prove that he had a reasonable excuse for not making the disclosure.

..."

6. By section 38B(5), the maximum penalty for such an offence on conviction on indictment is ten years' imprisonment.

7. In common with other definitive guideline published by the Sentencing Council, the guideline relating to this type of offence requires the sentencer to undertake a stepped process. At step one, the determination of the offence category, the guideline indicates three categories of culpability as follows:

"CULPABILITY demonstrated by one or more of the following

A

- Information was very significant (including, but not limited to, information which could have prevented an act of terrorism)

B

- Cases whose characteristics fall between A and C

C

- Information was of low significance"

8. The guideline then goes on to indicate two categories of harm as follows:

"HARM

The court should consider the factors set out below to determine the level of harm.

Category 1

- Information related to terrorist activity endangering life
- Information related to terrorist activity intended to cause widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure

Category 2

- All other cases"

9. We turn briefly to summarise the relevant facts. Mrs Anjum has a son, Sameer Anjum ("Sameer"), who was aged 15 at the material time. Sameer was a vulnerable teenager with a history of moderate depression and severe anxiety. He had an interest in radical Islam and espoused a strict adherence to Islamic teachings. He was a member of a WhatsApp group who called themselves the "Kuff Slayers Chat Group". His mother, Mrs Anjum did not share his views.

10. In or around mid-2021, Sameer came under the influence of Al-Arfat Hassan ("Hassan"), then aged 19, who was active in making drill rap music videos which promoted jihadist activity. Mrs Anjum disapproved of Hassan and tried, unsuccessfully, to dissuade her son from associating with him.

11. On 12 January 2022, Hassan downloaded a video which gave instructions on how to slaughter disbelievers. The instructions included a demonstration of the best way to kill with a knife, and a step-by-step demonstration of how to make an improvised explosive device ("IED").

12. Between mid-January and late February 2022, Hassan's social media messages to Sameer made it clear that Hassan was seriously contemplating making an IED for use in a terrorist attack. Sameer was aware that Hassan had purchased two of the chemicals required to make the explosive, and was researching how to make a detonator. Mrs Anjum continued to urge her son to end his association with Hassan. Because of what she was told by her son, the judge found that by early February 2022, Mrs Anjum must have realised that Hassan was going to commit a terrorist act which would injure others, perhaps involving a suicide bombing.

13. On 16 February 2022, Hassan's messages to Sameer made it clear that he was contemplating detonating a bomb. On 17 February, Sameer told Mrs Anjum that Hassan was going to commit a suicide bombing. Mrs Anjum did not pass that information on to the police or other authorities. She told her son that she wanted to protect him.

14. Sameer, using his mother's details without her knowledge, purchased a knife online. He sent Mrs Anjum images of himself brandishing the knife. She repeatedly criticised him for doing so.

15. On 27 February 2022, Hassan was stopped at London Heathrow Airport. His phones were seized. On 3 March, he was arrested and thereafter remanded in custody. Sameer subsequently deleted some of the material on his phone. Mrs Anjum still did not disclose to the police any of the information she held about Hassan.

16. Hassan made his first court appearance on 9 March 2022. Mrs Anjum was aware of that. Count 2 related to her failure to disclose information after that date. She warned her son that Hassan would be questioned and told him to get rid of everything from his phone.

17. Mrs Anjum was charged on an indictment containing two counts charging offences

contrary to section 38B of the Terrorism Act. Count 1, a charge relating to section 38B(1)(a) alleged that, between 31 December 2021 and 9 March 2022, Mrs Anjum, having information which she knew or believed might be of material assistance in preventing the commission by another person, namely Al-Arfat Hassan, of an act of terrorism, in the United Kingdom, failed to disclose that information as soon as reasonably practicable to a constable.

18. Count 2, relating to an offence contrary to section 38B(1)(b) alleged that between 9 March 2022 and 7 October 2022, Mrs Anjum, having information which she knew or believed might be of material assistance in securing the prosecution or conviction of another person, namely Al-Arfat Hassan, in the United Kingdom, for an offence involving the commission, preparation or instigation of an act of terrorism, failed to disclose that information as soon as reasonably practicable to a constable.

19. Mrs Anjum pleaded not guilty. She stood trial in May 2024 and, as we have indicated, she was convicted of both counts.

20. It is relevant to note that there were separate criminal proceedings against Hassan and Sameer. They were originally charged with a joint offence of preparation of terrorist acts, contrary to section 5(1) of the Terrorism Act 2006. However, after a trial at which the jury were unable to agree, and a further trial at which the jury were discharged, both of those accused pleaded guilty to other offences. Sameer pleaded guilty to offences of possessing articles for a terrorist purpose and failing to disclose information. Hassan pleaded guilty to an offence contrary to section 57(1) of the Terrorism Act 2000, of possession of the chemicals to which we have referred, in circumstances which gave rise to a reasonable suspicion that his possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism. They were sentenced by Jeremy Baker J (as he then was). Hassan was sentenced to an extended sentence comprising five years' detention in a young offender

institution and an extended licence period of two years; Sameer to a special custodial sentence of three and a half years, comprising a custodial term of two and a half years' detention and one year's further licence.

21. In sentencing Sameer, Jeremy Baker J referred to the Sentencing Council's guideline relating to section 38B offences, noted that it was accepted that Sameer's culpability was in category A, and said:

"Likewise, in terms of harm, it is properly acknowledged on your behalf that the information which you had as to Hassan's activities involved terrorist activity endangering life, such that the most appropriate level of harm is within category 1, albeit I accept that as harm was not very likely to be caused at that time, the appropriate starting point for an adult would be towards the lower end of the category range of between six to nine years' custody."

22. There were also separate proceedings against a girlfriend of Hassan, Tasnia Ahmed. She was convicted of two offences of failing to disclose information. On the day after Mrs Anjum was sentenced in the Crown Court at Leets, Tasnia Ahmed was sentenced by His Honour Judge Kinch KC, in the Crown Court at Woolwich, to a special custodial sentence of two years, comprising one year's imprisonment suspended for two years and a further one year's licence.

23. We return to the sentencing in Mrs Anjum's case. Now aged 48, Mrs Anjum was of previous good character. She has a degree in biomedical science and a postgraduate diploma in oncology, and had worked as a specialist biomedical scientist in the NHS for over 20 years.

24. At the sentencing hearing the judge was assisted by a number of documents: a pre-sentence report; a letter and report by Dr S Williams, a consultant neurologist; and two character references attesting to Mrs Anjum's professionalism and dedication to her work.

25. The medical evidence showed that Mrs Anjum suffers from a functional neurological disorder which causes her to suffer frequent, prolonged attacks of weakness and numbness of the left side of her body, associated with difficulties of speech, thinking and awareness. She also suffers migraine, asthma, type 2 diabetes, osteoarthritis, depression and anxiety. The impact of Mrs Anjum's functional neurological disorder was apparent to the judge during the trial, with careful arrangements having to be made to progress the proceedings in a way compatible with Mrs Anjum's frequent and repeated attacks.

26. Submissions were made to the judge about the application of the guideline.

27. In his admirably clear sentencing remarks, the judge gave the following summary of Mrs Anjum's position in February 2022:

"There came a stage, in early February 2022, when you became privy to information about Al-Arfat Hassan and his activities and must have then realised that Al-Arfat Hassan was going to commit a terrorist act that would injure others, including perhaps himself if it [was] a martyrdom operation or a suicide bombing.

That was when the position changed. You may not have known the exact nature of the act that Al-Arfat Hassan was contemplating, but you knew enough to warn your son, in messages, of the consequences for him if Hassan did something.

You then had a duty to alert the authorities. It was no longer a private concern on your part that Al-Arfat Hassan was a malign influence on your son. It was a matter of public concern that Al-Arfat Hassan was preparing to commit a terrorist act. Protecting your son was no longer an option to you when it came to the risk to life that Hassan posed. Protecting the public became the imperative."

28. The judge went on to say that Mrs Anjum had it in her power to prevent the risk of an imminent suicide bomb attack by phoning the police, but she had chosen not to do so. She

could have provided the police with information as to Hassan's identity, the area where he lived, his social media presence and the communications between him and Sameer, which would have shown the police what Hassan was planning. By mid-February 2022, she knew that Hassan was contemplating a suicide bomb attack, which would cause the deaths of innocent people. But, said the judge, she had not disclosed any of this information because she wanted to protect her son and seems to have given little or no thought to the consequences of allowing Hassan to continue with his plan.

29. With reference to the guideline, the judge said that the information which Mrs Anjum could have given was very significant, and culpability was at level A. As to harm, he referred to the sentencing remarks of Jeremy Baker J, when sentencing Hassan and Sameer, and said:

"In this case, the nature of the terrorist activity is represented not by what Al-Arfat Hassan might potentially have done, or what you might reasonably, on the information before you, have foreseen he might do, which goes to your culpability, but what he is proved to have actually done. That is an objective assessment. Therefore, it is the possession of the chemicals that is the terrorist activity alleged and in the circumstances where the trial judge, Jeremy Baker J, concluded that harm was not very likely to have been caused by Al-Arfat Hassan's possession of those articles.

In those circumstances, to categorise this case as category 1 harm seems to me to overstate the actual harm. I decline to do so. It follows that harm, for the purposes of the guideline, falls into category 2 on my assessment."

30. The judge therefore put the case into category 2A, with a starting point of four years' custody and a range from three to five years. He then referred to the mitigating factors: Mrs Anjum's previous impeccable character; her hard work over many years; her loss of that employment; her ill-health; the debilitating consequences of her neurological condition; and the passage of more than two years since the relevant events. He held that the neurological condition had not impaired Mrs Anjum's ability to understand what she was doing and did not

lessen her culpability. But, he said, her interaction with her son must be considered in the light of both her own and her son's problems.

31. The judge concluded that consideration of those factors made it appropriate to move downwards to a sentence outside the category range. He accordingly passed the concurrent sentences to which we have referred.

32. For the Solicitor General, Mr Little KC submits that the judge fell into error in categorising the offence under the guideline. He submits that this case fell clearly within category 1A, which has a starting point of seven years' custody and a range from six to nine years. As a result of that error, he submits, the sentence was unduly lenient. In addition, although he does not criticise the judge's approach of imposing concurrent sentences, Mr Little submits that the judge failed to give sufficient weight to the fact that the two counts overall covered a significant period of time. His principal focus, however, is on the proper application of the harm factor in the guideline.

33. On behalf of Mrs Anjum, Mr Iqbal KC and Mr Batra submit that the judge's approach to categorisation was correct, but that the judge failed to give sufficient weight to the mitigating factors. He submits that this is an exceptional case in which the judge should have imposed a special custodial sentence of two years, comprising one year's custody and one year's further licence period, and suspended the custodial term. In this regard he relies on the course taken by His Honour Judge Kinch KC in sentencing Tasnia Ahmed.

34. We are grateful to both counsel who have assisted us with detailed submissions as to their respective arguments as to the application of the guideline.

35. We begin by considering the important issue which has been raised as to the application

of the guideline. In this regard, we make two initial points.

36. First, as we have noted, the guideline identifies only two categories of harm. We do not accept Mr Iqbal's submission that category 1, if interpreted as the Solicitor General submits, would apply to almost every offence contrary to section 38B of the Terrorism Act 2000. True it is that each of the types of action listed in section 1(2) of that Act is a serious crime, and the sentence levels set by the guideline reflect the inherent seriousness of the offence of withholding information about such action. But terrorist activity endangering life, and terrorist activity intended to cause widespread or serious damage to property or economic interest, or substantial impact upon the civic infrastructure, are the most serious forms of the various types of terrorist action listed in section 1(2).

37. Secondly, it is important to remember that the essence of an offence contrary to section 38B is the withholding of information about another person which the offender knows or believes might be of material assistance in one of the respects listed in paragraphs (a) and (b) of subsection (1). The focus is therefore on the information held by the offender, but not disclosed to the police. The guideline must be read in that context.

38. We have already commended the clarity of the judge's sentencing remarks. The sentencing process which he had to undertake was a very difficult one. With all respect to him, we are satisfied that in his application of the guideline he did fall into error. We accept Mr Little's submissions as to step one of the guideline. The level of culpability depends on the significance of the information which the offender withholds. "Significance", in this context, requires consideration of, amongst other things, the value of the information in identifying the terrorist and in identifying the actual or intended terrorist activity. The level of harm depends on the nature of the terrorist activity to which the information relates. If that activity falls within guideline category 1, then category 1 provides the starting point for sentencing. If, in fact, no

terrorist activity takes place, for example because an arrest is made in time to prevent it; or if in fact the terrorist activity which takes place is less serious than was intended, for example because an IED fails to detonate; there may be grounds for making a downwards adjustment to the starting point. But the starting point remains that which is appropriate to the category 1 harm, about which the offender could have given information but did not.

39. That analysis is consistent with section 63 of the Sentencing Code, which requires a court, when considering the seriousness of any offence, to consider not only the harm which the offence caused, but also any harm which the offence was intended to cause or might foreseeably have caused. It is also consistent with the terms of section 38B(1) of the 2000 Act, which extends to the withholding of information about terrorist acts which in the event have not happened, or about an offence involving the preparation or instigation of an act of terrorism which in the event may not happen.

40. We are therefore satisfied, with all respect to the judge, that he was in error in his approach to the guideline. He should have placed these offences into category 1A and adopted the higher starting point accordingly.

41. In our judgment, that starting point fell to be reduced downwards to the bottom of the category range to reflect the fact that Hassan was unlikely to carry out his plan and did not in fact do so. A substantial further reduction then had to be made to reflect the personal mitigation available to Mrs Anjum, which was much stronger than in most other cases. We are not persuaded that any adjustment upwards was necessary because Mrs Anjum was convicted of two offences. In the circumstances of this case, we think that the judge was correct to adopt the approach he did to totality.

42. For those reasons we conclude that the appropriate total custodial term which the judge

should have imposed was not less than four years' imprisonment.

43. It follows that the sentences imposed by the judge were unduly lenient. The application for leave to appeal against sentence therefore necessarily fails. We say only this about it. Even if we had been persuaded that the judge was correct in his categorisation, we would not have regarded the grounds of appeal against sentence as arguable. The judge, having presided over the trial, was entitled to reach the conclusions he did as to the necessary length of sentence. He made a substantial allowance for the strong mitigation. The argument in the written grounds of appeal based on a suggested disparity between the sentences imposed upon Mrs Anjum, and that imposed by a different judge in different proceedings on another offender, cannot assist Mrs Anjum.

44. It remains to consider whether this court should now increase the total sentence which we have found to be unduly lenient. The court has a discretion in this regard. We have considered carefully whether to exercise that discretion in Mrs Anjum's favour.

45. We think it relevant in this regard to reflect upon the fact that the argument which has been advanced by the Solicitor General could, on the face of it, equally well have been advanced by an application for leave to refer the sentencing of Tasnia Ahmed. We fully understand why the Solicitor General felt it appropriate to apply in only one of the cases, and nothing we say should be thought to involve any criticism of the decision to refer this case, rather than the other. But from Mrs Anjum's perspective, the effect of the decision to proceed in that way is that she is placed at risk of having her sentence increased, when another accused in an apparently similar position is not. If we were to increase the sentences, we think that fairness would for that reason require us to make a significant reduction below the level which we have otherwise considered to be appropriate.

46. We also bear in mind the very real difficulties which Mrs Anjum is experiencing in prison as a result of her serious health problems. Whether it is medically correct that those problems are stress related is not for this court to say. But having, with the advantage of a sympathetic employer, been able to hold down most responsible employment for over 20 years, she is now in a position where she suffers many attacks per day, of a kind which we saw in the course of this appeal hearing.

47. We have concluded that it is not necessary, in the very particular circumstances of this case, to increase the total sentence.

48. Drawing these threads together, our conclusions are as follows. We grant the Solicitor General leave to refer. We find the sentences imposed below to have been unduly lenient because of an error as to categorisation under the guideline. But in our discretion, we do not increase the sentences.

49. We refuse the application for leave to appeal against sentence.

50. In the result, the sentencing remains as before.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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