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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2021] EWHC 158 (Admin)

No. CO/4280/2020

Royal Courts of Justice

Tuesday, 26 January 2021

Before:

MR JUSTICE HOLMAN

B E T W E E N :

THE QUEEN
ON THE APPLICATION OF
SINGH — Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT — Defendant

MS L. HIRST (instructed by Deighton Pierce Glynn) appeared on behalf of the claimant.

MR N. OSTROWSKI (instructed by the Government Legal Department) appeared on behalf of the defendant.

J U D G M E N T
(A s a p p r o v e d b y t h e j u d g e)

MR JUSTICE HOLMAN:

Introduction

1 The Secretary of State for the Home Department ("SSHD") wishes to deport the claimant to India. She has been detaining him in immigration detention at Wormwood Scrubs Prison since 19 December 2019, i.e. now for just over 13 months. The claimant does not argue that that detention was unlawful at its inception, but he does argue that it has now become unlawful on the application of the well-known *Hardial Singh* principles. The case was listed for a so-called rolled-up hearing of the application for permission to apply for judicial review, and of the substantive judicial review if permission was granted.

2 Having read the papers in advance, I considered that the claim was clearly arguable, with a realistic prospect of success. I therefore granted permission to apply at the outset of the hearing, and then heard the substantive judicial review. The whole hearing took place as an attended hearing in an ordinary open, public courtroom at the Royal Courts Justice on 21 January 2021. I now deliver this judgment publicly in the same courtroom, although, with my agreement, the advocates and solicitors are listening remotely.

3 The case was extremely well argued by each of Ms Leonie Hirst, on behalf of the claimant, and Mr Nicholas Ostrowski, on behalf of the SSHD, who both attended voluntarily, and I am very grateful to both of them.

The legal framework

4 The relevant legal principles are agreed and not in issue. It is not in issue that the SSHD desires and actively intends to deport or remove the claimant as rapidly as she is able to do so, as *Hardial Singh* principle 1 requires. The SSHD may lawfully detain the claimant (including in a prison) while she attempts to deport or remove him. However, on the authority of *Hardial Singh*, which is now deeply embedded in this area of law, she may only detain him for a period which is reasonable in all the circumstances (principle 2); and if, even before the expiry of that reasonable period, it becomes apparent that she will not be able to deport him within that period, she must release him now (principle 3). Administrative detention is a draconian power which requires to be very anxiously scrutinised by the court, as I have done. In assessing a reasonable period, relevant circumstances are likely to include the length of the period of detention to date, the nature of the obstacles to removal, the diligence, speed and effectiveness of the steps taken by the SSHD, the conditions in which the person is being detained, the effect of detention upon him, the risk that if released he will abscond, and the risk that he will commit criminal offences. These factors are set out in identical terms in both paragraph 48 of the skeleton argument of Ms Hirst and paragraph 4 of the skeleton argument of Mr Ostrowski, and I will address them in turn later. Paragraph 65 of the judgment of Richards LJ in the Court of Appeal in *R (MH) v SSHD* [2010] EWCA Civ 1112 makes clear that there can be a realistic prospect of removal within the overall reasonable period of time even although it may not be possible (and it is not currently possible in the present case) to specify or predict the actual date by which, or period within which, removal can reasonably be expected to occur, and without any certainty that removal will occur at all. "There must be a *sufficient* [emphasis in the original] prospect of removal to warrant continued detention when account is taken of all other relevant factors."

5 Although this is a claim in judicial review, it is common ground that the *Wednesbury* test does not apply. I am not assessing the rationality or reasonableness of the position of, or decisions taken by, the SSHD. I am required, as the primary decision-maker, to form my own independent judgment as to whether there is a sufficient prospect of removal within an overall reasonable period of time that the detention currently remains lawful. It is also common ground that the burden is upon the SSHD to persuade or satisfy the court that the period of detention is reasonable. It is not upon the claimant to establish that it is unreasonable.

6 Finally, there is an issue in the present case as to the extent of co-operation by the claimant in the steps necessary to obtain an emergency travel document ("ETD") which is the current obstacle to removal. In this regard, in *Sino v SSHD* [2011] EWHC 2249 (Admin), Mr John Howell QC said, at paragraph 56:

> "…other things being equal, … a reasonable period for the detention of an individual who does not co-operate in obtaining a travel document may well be longer than it will be in the case of an individual who co-operates. Similarly, it is likely, other things being equal, that a reasonable period may be still longer in the case of an individual who seeks to frustrate efforts to obtain one by supplying false or misleading information… Nonetheless,… his conduct cannot be regarded as providing a trump card justifying detention indefinitely. The Secretary of State may not detain a person pending deportation for more than a reasonable period, even in the case of an individual who is deliberately seeking to sabotage any efforts to deport him."

The facts

7 The claimant is aged 37. He appears to originate from India, where he was brought up and lived until around the age of 20, and he appears to be a citizen of India, but he does not possess a passport. He first came to the attention of the Home Office in April 2008 when he was arrested on suspicion of being an illegal entrant. He stated then that he had entered the United Kingdom the previous year, namely in 2007. He has on other occasions stated that

he entered in 2004 or 2005. When he was arrested he was granted temporary release subject to reporting conditions. In breach of those conditions, he failed to report, and his whereabouts were unknown until January 2014, namely almost six years later, when he was again encountered and arrested on suspicion of overstaying. So that was his first absconding, of almost six years' duration. In January 2014 the claimant was again released and again absconded. So that was his second absconding.

8 In May 2014 the claimant was arrested on suspicion of a serious sexual offence. On 15 December 2014 he pleaded guilty to, and was convicted of, sexually assaulting a 16-year-old by penetration. On 23 January 2015 he was sentenced to four years' imprisonment, which I regard as indicating that the facts and circumstances of the offence were serious. He was required to sign the Sex Offenders' Register indefinitely. Also in January 2015, the claimant was convicted of common assault and sentenced to 14 days' imprisonment. So that was a second offence against the person, although of much less gravity.

9 In April 2016 the SSHD served a deportation order upon the claimant, which subsists. The claimant had applied for asylum, but his claim was rejected at the same time and he has not appealed from that decision.

10 On 6 July 2016 the claimant was released from his criminal sentence. But he was immediately detained under immigration powers until 21 June 2018, when he was released to approved premises. He failed to attend or remain at those premises, and he failed to report to the Probation Service, as had been required, and he disappeared again until 6 August 2019, when he was encountered and arrested. So that was his third absconding, of about 13 months' duration.

11 On 13 September 2019 the claimant was convicted of, and sentenced to 8 months' imprisonment for, failing to comply with his sex offender notification requirement. That was his third criminal conviction, and the offence, which was serious, indicates a disregard for reporting requirements and the criminal law which, in turn, increases the risk of future absconding if released. The custodial term of that criminal sentence ended on 19 December 2019, since when, as I have said, the claimant has been detained at Wormwood Scrubs Prison under immigration detention powers. Immigration bail has been refused by tribunal judges on 31 December 2019, 11 June 2020 and 26 November 2020.

12 There appears currently to be only one obstacle to removal, namely the absence of an ETD for entry into India. The claimant does not possess a passport. There has been reference in the documents and, indeed, in the skeleton argument of Ms Hirst at paragraph 65, to the non-availability or paucity of flights to India as a result of the COVID-19 pandemic. The very recent witness statement of Mabs Uddin, an assistant director of returns logistics and head of the Asia country liaison team (which incudes India) in the Croydon office of the Home Office, satisfies me that if an ETD is obtained there are, currently, some regular flights to India, and both voluntary and enforced returns are currently being effected. There would, of course, be requirements as to a very recent negative COVID test which (if positive) could, at the last minute, derail a planned return, but the SSHD, who is keen to deport this person, would obviously facilitate and fund the providing of the necessary test or tests, and in my view, neither the relative paucity of flights nor any issues around the need for COVID tests impact upon the current reasonableness of the past or any further future detention.

13 The problem and obstacle is the ETD. If and when that is obtained the claimant is likely to be removed rapidly. The process of trying to obtain an ETD has undoubtedly been protracted for several reasons, some of which are not the responsibility of the claimant, but

others of which are or may be. A file note dated 14 January 2020 (now at bundle tab 31, page 497) records that the claimant refused or declined to complete the required form. However, on or about 18 April 2020 (see bundle page 392) he did do so. Unfortunately (and certainly not the responsibility of the claimant), that form was returned by the Indian authorities on the grounds that the photograph was not of acceptable quality. A further form was returned by the Indian authorities as being a copy, not an original. Finally, on 14 September 2020, an application was submitted which lacked these formal defects.

14 In these forms, including that submitted on 14 September 2020, the claimant gave as his permanent address in India "39, 8 Anjala Road, Kennedy Avenue, Amritsar, Punjab 143001". On 7 December 2020, the Indian High Commission notified that the address provided on the form was "not correct" and that the identity of the claimant had not been verified. Faced with this, the claimant gave a different "permanent address in India", namely, "Raja Sansi Road, Amritsar, Punjab 143001". The postcode or ZIP code, 143001, remains the same, but the name of the road appears to be quite different. This new address is the address contained in the further application form finally signed by the claimant on 22 January 2021, as I will describe below. I appreciate that it may be as long as about 17 years since the claimant was last in India. At that time, roads and addresses may have been imprecisely defined; and/or the memory of the claimant may have become genuinely confused with the long passage of time. So I do not conclude that the claimant has deliberately supplied a false address or addresses. But the fact remains that he has now provided two, and it appears unlikely that both are right. There may or may not be fault or non-cooperation by the claimant in relation to the address, but it is certainly not the responsibility of the SSHD if a wrong address has been given.

15 On 16 December 2020 the claimant was provided with, and asked to sign, a yet further ETD application form, now at tab 35, page 972, giving the Raja Sansi Road address. He signed in

three places with specimen signatures, but declined to sign the obviously critical "self-declaration" at the end of the form. He maintained his refusal on 4 January 2021 (see tab 35, page 956. NB I read the entries on this page as evidencing a single occasion of refusal on 4 January, not refusals on 4 and 6 January 2021). Through the first and second witness statements, dated 19 November 2020 and 13 January 2021, of his solicitor, Mr Adam Hundt, the claimant variously explains these refusals to sign as being due to his being fed up with being asked to sign forms, and/or not having an interpreter present, and/or on one unspecified occasion, the prison officer being rude and making an (unspecified) racist remark.

16 By a third statement dated 22 January 2021 (after the oral hearing on 21 January), the very diligent Mr Hundt stated that he had managed to speak to the claimant that morning and that the claimant would now sign the form. By an email sent later on 22 January 2021 by the Government Legal Department, I have been informed that the claimant has now, on 22 January 2021, duly signed the form in the required space. The form will, in turn, be sent to the Indian authorities as soon as practicable. The way is now open for the Indian High Commission to consider whether to grant an ETD, although (as to which I can have no view) that may depend upon a correct address having been given.

17 As to the timescale, the evidence now at bundle tab 36, page 981, is that when, as in this case, there is no supporting evidence, the timescale is "minimum 3 months but likely to be longer due to in-country verification checks. However, due to the current situation (COVID-19) normal timescales do not apply." I note, however, that after remedying the more formal defects, the previous application was submitted to the Indian authorities on or about 14 September 2020 and the response that the address was wrong was received on or about 7 December 2020, a little under three months later.

18 In the light of the above narrative, I conclude that there is currently a realistic and reasonable prospect of an ETD being obtained *and* of the claimant being actually removed to India within not more than six months of today which, when added to the 13 months to date, would involve his being detained for overall not more than about 19 months if he does remain detained.

Analysis

19 The questions which I now have to address are (1) whether the claimant has already been detained for a longer period than is reasonable in all the circumstances. If so, he must be released now; and (2) if not, whether the further period of six months to which I have just referred, when added to the 13 months to date, is a reasonable period. If not, he must also be released now. I repeat that the decision is one for my own independent judgment, but the burden is on the SSHD to satisfy me that both the period to date and the anticipated further period are, in all the circumstances of the case, reasonable ones.

20 Every case is very fact-specific, but although both 13 months, and even more so 19 months, seem very long periods for anyone to be detained in a prison without trial, and while not awaiting trial for a criminal offence - i.e. detained in administrative detention - numerous authorities do contemplate detention for such periods and, indeed, quite considerably longer. It cannot therefore be said that either 13 months or even 19 months is, by that fact itself, unreasonable.

21 In addressing the above questions I will consider each of the factors listed by both counsel in their skeleton arguments, at paragraph 48 and paragraph 5 respectively, and set out above. The length of the period of detention to date is 13 months. Although there was an earlier long period of immigration detention between 6 July 2016 and 21 June 2018, I do not

aggregate it, and I now attach little weight to it, since it was followed by a period of over 13 months of non-reporting and absconding, including the criminal failure to comply with sex offender notification requirements.

22 The additional period before which the claimant may now realistically be removed may be as much as a further six months. The obstacle which has stood, and does still stand, in the way of removal is the need to obtain an ETD. The SSHD has not pursued that as diligently and effectively as she could. To submit an inadequate photograph, or a copy and not an original form, seem elementary mistakes which the Home Office, who are regularly applying for ETDs, should not make. But the overall delay in making an effective application for an ETD, assuming one is now about to be made, has also been lengthened or aggravated by the acts and omissions of the claimant himself. He declined to sign or complete the required form between 14 January 2020 and 18 April 2020, about three months. He declined again between 16 December 2020 and 22 January 2020, about six weeks. He gave an apparently incorrect address in the form submitted on 14 September 2020, which the Indian High Commission rejected on 7 December 2020, a period of just under three months. I conclude, therefore, that of the total delay of about 13 months in validly applying for an ETD since the claimant was detained in December 2019, at least six months are attributable to the acts or omissions of the claimant, whether they are regarded as culpable or not, and are not attributable to the SSHD.

23 The claimant has been detained throughout in Wormwood Scrubs Prison, which is a category B prison, and not, as he might have been, in an immigration removal centre ("IRC"). The reason for that appears to be the degree of risk or likelihood of absconding, to which I will refer below. I do regard a category B prison as a much more restrictive and much more unpleasant environment than an IRC. The claimant, who is not serving a criminal sentence, is sharing the regime of those who are. The rigours and restrictions are

undoubtedly increased by the COVID-19 pandemic. Mr Hundt describes, and I accept, that recently the claimant has been given cleaning responsibilities which will enable him to leave his cell three times a week and which have improved his psychological state to some extent. Apart from that, he is only allowed out of his shared cell for 20 minutes per day, during which he has to collect his medication. If there is time he can have a shower, but usually there is no time.

24 A particular feature at the current time is, obviously, the risk of catching the COVID-19 virus of which, Mr Hundt says, the claimant is very afraid. The claimant says that he has asked to be removed to less infected parts of the prison but that has been refused. On 22 January 2020, the day *after* the oral argument, Mr Hundt made and sent to me his third statement dated 22 January 2021. In the circumstances, I have admitted it into evidence and, indeed, it has had the very benign effect that the claimant was successfully asked to sign the ETD application form that day. Mr Hundt says in that statement that the claimant says that COVID-19 is now widespread on his wing. On his wing there are 4 landings, each with 10 cells. The claimant says that (as of 22 January 2021) the ground floor is completely closed as all the prisoners have tested positive. Half the second floor cells are closed and half the fourth floor cells are closed. On the third floor, where the claimant is currently held, four out of ten cells are closed. If this information is correct, about half the total cells in the wing are closed. Mr Hundt continues at paragraph 4:

> "There is little air circulation and he says he cannot breathe properly, although he has not tested positive. It is hard to get a guard's attention, and they take hours to arrive after being called. He is very frightened."

25 I wish to make clear that I am very concerned indeed about the risks from COVID-19 in this case, although they were scarcely touched upon during the oral argument when, of course, the information in Mr Hundt's third statement was not available. At paragraph 19 of his

skeleton argument, Mr Ostrowski submitted that "While the conditions of the claimant's detention during the pandemic are unfortunate… the court has confirmed that detention of immigration detainees during the pandemic is not unlawful" and he cites the decision of a divisional court in *R (Detention Action) v SSHD* [2020] EWHC 732 (Admin).

26 Since the hearing I have downloaded and considered that authority. It is to be noted that it was dated 25 March 2020, in the relatively early stages of the pandemic. Vastly more evidence is, of course, now available, both as to the risks of transmission and the risks of serious illness or death if infected. Further, that case concerned IRCs, and makes no mention of detention in prisons in which (I have no evidence and I do not know) the risks of transmission and infection may or may not be higher. Further, the application before the court in that case was for interim relief, to which the particular principles of *American Cyanamid* applied. At paragraph 25 of their judgment, the Divisional Court said that:

> "We accept that the position of those in immigration detention [viz in context, IRCs] is not without risk of serious harm… That risk is no different from the risk faced by the entire population."

27 In the present case, there has been no opportunity for the SSHD to marshal evidence in answer to the anecdotal statistics given through the third statement of Mr Hundt. I simply do not have objective evidence as to the prevalence or risk of COVID-19 within Wormwood Scrubs, nor how it compares with the prevalence in the general population, nor as to the steps being taken by the prison authorities to minimise the risk. Further, the overall position in relation to the pandemic is a shifting one with, as I prepare this judgment, emerging revised accounts from the government as to mutant strains, the frequency of transmission and the seriousness of illness if infected.

28 Other consequences of detention in a prison rather than even in an IRC are that the claimant has no access to a mobile phone or the internet, and legal visits are currently not allowed (due to COVID). As well as being in modern times severe restrictions upon the intrinsic day-to-day freedoms of modern life, these restrictions have meant that it has been extremely difficult for the claimant to communicate with his solicitor and vice versa, which did, almost certainly, exacerbate and prolong the recent refusals to sign the ETD application form.

29 The claimant has no family in the United Kingdom, but the effect of detention in a prison upon him has certainly been marked. He self-harmed several times whilst in prison in 2017 and 2018, and again in November 2020, when he cut a deep gash in his arm and was placed on an ACCT for suicide and self-harm monitoring. In late December 2020 he was assessed as being a vulnerable adult at level 2 of the Adults at Risk Policy. He is very afraid of contracting COVID. According to the second statement of Mr Hundt it was "in an effort to improve his mental health, which had deteriorated to the point of self-harming" that the claimant has been given cleaning responsibilities which has, indeed, "improved his psychological state to some extent."

30 If all the factors which I have so far discussed stood alone, then there would be an almost unassailable case for immediate release from detention. Indeed, but for the risk of absconding and any risk of further criminal offending, detention pending removal could not be justified at all. But the above factors do not stand alone. The risk of absconding and the extent of the risk of further criminal offending must be brought into the balance. I emphasise, as the Supreme Court did in *R (Lumba)* v SSHD [2011] UKSC 12, that the risk of absconding is *not* a trump card. But it is "always of paramount importance since if a person absconds, he will frustrate the deportation for which purpose he was detained in the first place" (Lord Dyson at paragraph 121).

31 As a matter of my own independent judgment, I consider that there is a high, or even very high, risk of this claimant absconding if he is released from all detention. I have already described how he has absconded and disappeared on three occasions in the past when he was under reporting obligations, once for almost six years between April 2008 and January 2014. Additionally, discretely, and significantly, he committed the offence of failing to comply with his sex offender notification requirements which, as I have said, indicates a disregard for reporting requirements and the criminal law.

32 This is not, however, my own assessment alone. It is mirrored and fortified from other objective sources independent of the immigration functions of the Home Office. It is recorded at bundle tab 32 page 866 that the claimant's offender manager assesses his risk of absconding as "high". In an email dated 30 November 2020, now at bundle tab 32 page 907, the claimant's probation officer, Nicole John, states that "There are significant concerns around absconding."

33 The police expressed concern about absconding in January 2020, as recorded in bundle tab 32 at page 638:

> "We have major concerns about [the claimant] being released anywhere in the UK. When last released [viz in June 2018], rather than go to Kew approved premises, as directed, he went to Southall, and disappeared for over a year. We wasted a great deal of time and effort trying to locate him…"

By an email dated 4 December 2020, now at bundle tab 33 page 913, a police officer, Detective Inspector Adam Roberts, states:

> "I would agree that he is a high risk of absconding and whilst he is unlawfully at large it is not possible to manage the risk he poses."

By a further email dated 8 December 2020 another police officer, Tahlia Ciampini (I am unclear as to her rank) states:

> "… I do not think we can stress enough how much of a high risk that we view [the claimant] is. We really have no means of managing him in the community as he has shown a complete disregard for all agencies. I am pretty confident, based on previous interactions, that he will not comply with police or probation should he be released and he will once again disappear into the community…"

34 This view is shared also by the First-tier Tribunal immigration judges who have refused bail. On the most recent occasion, 26 November 2020, the immigration judge, Dr T D A Dempster, included within his "reasons for refusal", now at bundle tab 32 page 910:

> "The applicant has an appalling history of non-compliance with both conditions of immigration bail and orders of the criminal court. He has failed to sign the Sex Offenders' Register and when provided with approved accommodation upon release from custody, he simply failed to turn up and remained at large thereafter until arrested by the police. I note the period the applicant has so far spent in immigration detention and have regard to the President's guidance. I am not satisfied that there are bail conditions that could, at this stage, address any risk of non-compliance, and in the circumstances of this case I am satisfied detention is both necessary and proportionate. Accordingly, bail is refused."

35 These independent sources fortify, but do not supplant, my own view and judgment that this claimant represents a high, or in my view even very high, risk of absconding again if released. He has no family and no known stable base in the United Kingdom, and it is very likely that he would disappear into the community again as he has done so often in the past. Whilst Ms Hirst submitted that there could be stringent and frequent reporting restrictions, the plain fact is that they have not proved effective in the past.

36 The risk of committing further offences if released is, of course, a completely separate and discrete matter. The claimant's most serious offence was the penetration of a 16-year-old, for which he was sentenced to four years' imprisonment. If he were to commit that or any

similar sexual offence again, the harm inflicted would be high. However, an OASys assessment by the National Offender Management Service in November 2019, now at bundle tab 32 page 873, assessed the risk of re-offending as "low", and a file record dated 26 November 2020, now at bundle tab 32 page 866, appears to repeat that that remains the assessment of the claimant's offender manager. I have no grounds or basis for not accepting, or for differing from, that assessment by the offender manager, who has met the claimant and whose professional assessment it is. I proceed, therefore, on the basis that although the risk of absconding is high or very high, the risk of re-offending is low. In this case it is, therefore, only the risk of absconding, but not a risk of re-offending, which may require and justify continuing the detention.

37 Very understandably, Ms Hirst placed considerable reliance upon two repeated recommendations by the SSHD's own Case Progression Panel, on 26 August 2020 and again on 19 November 2020, that the claimant should be released; that of 26 August 2020 is at bundle tab 31 pages 506-507, and that of 19 November 2020 is at tab 32 page 847. Each recommendation was, however, not followed, or was overruled, by the executive officer, Julie Westray-Baird, who carried out the subsequent Detention Case Progression Reviews on 17 December 2020 (now at bundle tab 32 pages 802-808) and 23 December 2020 (now at bundle tab 35 pages 958-965) and the assistant director, Margaret Kelly, who, on each occasion, authorised continued detention (see page 808 and pages 964-965). Julie Westray-Baird established and noted, as Mr Ostrowski emphasises, that each recommendation of the Case Progression Panel was tainted by clear error. That of 26 August 2020 wrongly recorded that the claimant's risk of absconding had been assessed by his offender manager as "low". As noted above, it had in fact been assessed by the offender manager as "high". That of 19 November 2020 repeats that the claimant is a "low absconder". That error necessarily impacts the assessment of the Case Progression Panels as to the overall reasonableness of the period of detention before removal.

38 Insofar as the Case Progression Panel on 19 November 2020 recorded that: "… at current, there is no prospect of removal…" I respectfully disagree with them. As at that date, an application for an ETD had been submitted relatively recently in September and was awaiting a reply.

Outcome

39 Viewing all the above factors in the round, and performing the necessary balance, I am persuaded by the SSHD and do myself consider that, as of today, the continued detention of the claimant remains lawful. Although the risk of absconding is not a trump card, the risk in the present case is high or very high. It does not trump, but in my view it does, in this case, outweigh the many other factors which all favour release. Echoing Lord Dyson in *Lumba* at paragraph 121, if the claimant is now released he will be highly likely to frustrate the deportation for which purpose he was detained in the first place. The SSHD has, for good and justifiable reasons, been trying to deport the claimant since 2016. He has a significant criminal record, and he does not have, and never has had, any right to remain here. There is, in my view, a sufficient prospect of removal within the next six months that it is currently reasonable to continue to detain him during that period, even when aggregated with the previous 13 months, and giving full weight to the category B prison conditions in which he is being detained.

40 I thus dismiss the present claim for judicial review. In doing so, I wish to stress, however, that my decision is based squarely on the facts and circumstances as they currently are or appear to be. The SSHD must continue to keep this case under very frequent review, applying anxious scrutiny. The assessment of the risk of absconding may not change, but the Indian High Commission may again refuse the application for an ETD. The

psychological state of the claimant may deteriorate. The threat and risk from COVID in the prison may increase. The impact of any of these, or other, changes will require to be carefully considered by the SSHD with an open mind, and may require and impel that the claimant is later released, subject to whatever conditions the Secretary of State may then lawfully impose to attempt to minimise the risk of absconding. But for now, the present claim is dismissed.

CERTIFICATE

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