Neutral Citation Number: [2024] EWHC 1982 (Admin)

Case No: AC-2024-LON-000768

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2024

Before

MR JUSTICE SWIFT

- -

Between

THE KING

on the application of

SONYA SUMAL

Claimant

-and-

LEICESTER CROWN COURT

Defendant

-and-

CROWN PROSECUTION SERVICE

Interested Party

- -
- -

Beth O'Reilly KC (instructed by **Stokoe Partnership**) for the **Claimant**
The Defendant did not appear and was not represented
The Interested Party did not appear and was not represented
Hearing date: 16 July 2024

- -

Approved Judgment

MR JUSTICE SWIFT

A. Introduction

1. Sonya Sumal challenges the decision of His Honour Judge Spencer KC, made at Leicester Crown Court on 8 December 2023, attaching conditions to her bail. The Claimant is charged with an offence under section 40D of the Prison Act 1952, of transmitting images and sound from within a prison without authority. It is alleged the offence was committed between February and September 2022. The Claimant's co-defendant is her partner, Voja Petkovic. Mr Petkovic has been on remand for some time pending trial on charges of conspiracy to supply Class A drugs and firearms. That trial has been delayed. The trial started in November 2023 at Loughborough Crown Court and is expected to finish in November 2024. The trial of the Claimant and Mr Petkovic on the charge under section 40D of the Prison Act 1952, and the trial of Mr Petkovic on three further charges under section 40D of the 1952 Act is due to commence after the proceedings at Loughborough Crown Court have concluded.

2. On 3 March 2023, the Claimant was interviewed by the police in connection with the section 40D offence, having attended the police station voluntarily. On 3 April 2023 a summons was issued by post requiring her attendance at the Magistrates' Court on 28 April 2023 and she appeared at the Magistrates' Court as required. At that time, the case was adjourned until 17 May 2023 and the Claimant was granted bail, without condition. On 17 May 2023 the case was sent to Leicester Crown Court. A Plea and Trial Preparation

Hearing ("PTPH") was due to take place on 26 June 2023 but, on 23 June 2023, was relisted for 17 July 2023. On 17 July 2023 the trial date was set for 15 January 2024, and the PTPH was otherwise adjourned to 4 August 2023 so that it could be heard together with an application by the Claimant and Mr Petkovic to dismiss the charges. That hearing was vacated and the matter relisted on two other occasions. On 30 October 2023 there was a hearing before Judge Spencer. At that hearing the January 2024 trial date was vacated. The matter came before the Judge again on 9 November 2023. On that occasion a new trial date was set, 8 April 2024, and the PTPH was listed for 8 December 2023. Throughout this time the Claimant had remained on bail with no condition attaching to that bail.

3. The hearing on 8 December 2023 before the Judge was rather disjointed. When the matter was first called on at 9:46 am, although the Claimant was present, the prosecutor was not present and Mr Petkovic was not produced. The Judge put the case back to 2pm. When the Judge put the case back to 2pm he imposed a condition that the Claimant should not leave the court building pending the resumed hearing.

4. The case came on again at 2:27pm. The court dealt with various matters. So far as concerned bail, the material part of the transcript is as follows:

> "JUDGE SPENCER: Right. Now, what's the bail position with Ms Sumal?
>
> MR LYNCH: She has been on unconditional bail, from my understanding.

JUDGE SPENCER: Well, she's not anymore given the length of time away the trial is. So, there will certainly be a condition of residence. I want to hear more about her. First of all, where does she live? Does she have family? Does she have children? What's the position?

MR LYNCH: She does, yes. And if you –

JUDGE SPENCER: Go and talk to her if you want.

MR LYNCH: No, your Honour, I have the details here. Forgive me.

JUDGE SPENCER: Right. There will be a condition of residence.

MR LYNCH: It’s 15 Melton Avenue. Oh, maybe I should go and talk to her.

JUDGE SPENCER: Yeah, I think perhaps you should. (pause)

MR LYNCH: Well thank for the extra time. The address of residency will be 16 Uplands Avenue

JUDGE SPENCER: What is it now?

MR LYNCH: This is the address now.

JUDGE SPENCER: Right. 16?

MR LYNCH: 16 Uplands Avenue.

JUDGE SPENCER: Yeah.

MR LYNCH: Postcode DE23 1FY.

JUDGE SPENCER: Is that actually in Derby or not?

MR LYNCH: That is in Derby, yes. Your Honour, can I also raise your attention –

JUDGE SPENCER: Well, hold on. Right. That’s now a condition of your bail. You understand Madam? You must be there. Don’t go moving without applying to the court. You understand? Tell me about her children, ages.

JUDGE SPENCER: There’s one child, I believe one five years old. Forgive me.

JUDGE SPENCER: 5-year-old child who’s at school in Derby.

MS SUMAL: Yes.

JUDGE SPENCER: Right. Go on.

MR LYNCH: Ms Sumal is currently working, your Honour, and has a prearranged, obviously subject to your Honour's leave work event on the 15th to the 20th of February.

JUDGE SPENCER: Right.

MR LYNCH: Where she'll be promoting her business, which she currently works for in Saudi Arabia. She raised that before the hearing, before –

JUDGE SPENCER: No, she's not going abroad. She'll surrender her passport.

MR PETKOVIC: Fucking dickhead, man.

JUDGE SPENCER: Sorry, I heard that Mr Petkovic. There'll be no repetition of that.

MR PETKOVIC: You can hear all you like.

JUDGE SPENCER: You can mute.

MR PETKOVIC: It's ridiculous.

JUDGE SPENCER: Don't be impertinent with me. You may think you can be impertinent in Loughborough, but you will not be impertinent to me. She'll surrender her passport and all travel documentation.

MR LYNCH: Of course, you Honour will be aware that this offence dates back to 20 –

JUDGE SPENCER: I am.

MR LYNCH: September 2022, of course.

JUDGE SPENCER: I am.

MR LYNCH: Your Honour will also be aware there's been no issue with any bail since then.

JUDGE SPENCER: She will surrender her passport and all travel documentation. When?

MR LYNCH: Your Honour, yes.

JUDGE SPENCER: When?

MR LYNCH: I'd ask for the next, well, today's Friday. So, the next … yes, the next –

> JUDGE SPENCER: Ordinarily should stay in custody until they're actually surrendered to the police station. But I will make an exception.
>
> MR LYNCH: Well, I'm grateful for that invitation, your Honour.
>
> JUDGE SPENCER: Find out where the nearest police station is to her home, and she'll surrender by midday on Wednesday.
>
> MR LYNCH: Your Honour. Yes.
>
> JUDGE SPENCER: She wants to tell you something, which you better find out.
>
> MR LYNCH: Forgive me, your Honour.
>
> JUDGE SPENCER: Somebody give me the date of Wednesday.
>
> MR LYNCH: Sorry, yes.
>
> JUDGE SPENCER: Right. She can do that, can she?
>
> MR LYNCH: Your Honour, yes.
>
> JUDGE SPENCER: Right. That will suffice those two conditions, Mr Lynch.
>
> MR LYNCH: Well, I'm grateful.
>
> JUDGE SPENCER: Is there anything else you want to raise?
>
> MR LYNCH: No, thank you, your Honour."

5. The Claimant challenges the Judge's decision to impose the residence condition and to require her to surrender her passport and travel documents on the grounds that the Judge: (1) misapplied provisions in the Bail Act 1976; (2) took account of irrelevant matters and gave insufficient weight to relevant ones; and (3) reached a conclusion that was irrational.

6. The Defendant to this claim is the Crown Court at Leicester. In the usual way when a defendant to judicial review proceedings is a court, the Defendant has

not sought actively to defend the claim. In Section A of the Acknowledgement of Service form, the Defendant ticked the box "The defendant is a court or tribunal and does not intend to make a submission". However, when the Acknowledgement of Service was filed it was filed under cover of an email dated 20 March 2024 which included the following.

> "Please find attached an acknowledgment of service on behalf of the defendant, Leicester Crown Court, in the above matter. The defendant wishes to remain neutral and not participate in proceedings unless otherwise directed by the Admin Court.
>
> To assist the Admin Court, below are comments from HHJ Spencer KC on this matter. We are remaining neutral in this Judicial Review and the comments are being provided to assist the Admin Court.
>
> Comments:
>
> 1. It is submitted that it is clear – p37E onwards – that the judge was addressing the risk of failing to attend trial. That risk was increased by a delay between the first effective PTPH when the seriousness of the applicant's position became clear and a trial date some 5 months distant, particularly when the applicant, a non-UK national, was proposing leaving the jurisdiction in Feb 24.
>
> 2. The transcript does reflect a series of interruptions from the male defendant at 38E onwards but a written transcript cannot adequately convey what actually happened in court. He joined by prison link, was defiant throughout, interrupted in an abusive way – 38E- and interrupted again despite being told not to, and sought to dominate proceedings. What the transcript does not reflect is that the judge ordered that the prison link be put on mute (sometime after "you can mute" at 38F) which silenced his further attempts to disrupt. The judge's remarks at 39E onwards were meant to convey, in language he would clearly understand, that such behaviour would not be tolerated in court."

7. The Crown Prosecution Service is the Interested Party. It filed an Acknowledgment of Service stating that it did not intend to contest the claim. I have therefore heard submissions only on behalf of the Claimant. They

have been made by leading counsel, Beth O'Reilly KC. I am very grateful for her assistance.

8. The claim was filed on 4 March 2024. On 15 May 2024, Hill J considered the application for permission to apply for judicial review on the papers. She neither granted nor refused permission, but ordered a rolled-up hearing. She noted that the Statement of Facts and Grounds had not addressed the possible application to this case of section 29(3) of the Senior Courts Act 1981, which restricts the jurisdiction of the High Court over the Crown Court. She also noted that the information provided by the Defendant in the 20 March 2024 email had not been provided in the form of a witness statement.

B. Decision

9. The first matter to consider is section 29(3) of the Senior Courts Act 1981, which provides as follows.

> "(3) In relation to the jurisdiction of the Crown Court, other than its jurisdiction in matters relating to trial on indictment, the High Court shall have all such jurisdiction to make mandatory, prohibiting or quashing orders as the High Court possesses in relation to the jurisdiction of an inferior court."

In *M v Isleworth Crown Court* [2005] EWHC 363 (Admin), the Divisional Court considered a challenge to a decision of the Crown Court refusing bail to a defendant facing trial on charges of conspiracy to import Class A drugs. The application for bail had been made and refused shortly after the case had been transferred from the Magistrates' Court to the Crown Court. The judgment of Maurice Kay LJ included the following.

> "6. Following that refusal of bail, the claimant made the present application to this court. Until April of last year, a

person in the position of M would have applied to a High Court judge for bail. However, that form of access to the High Court was abolished by section 17(3) of the Criminal Justice Act 2003, which came into force on 5th April 2004. Clearly the intention and effect of that abolition is generally to confine decisions on bail to judges in the Crown Court. Its origin is to be found in Auld LJ's report which expressed concern about the wasteful duplication of bail applications.

7. As I have said, the present application is for judicial review of a refusal of bail by the Crown Court. Two jurisdictional issues require comment, although there is no dispute about them in the present case. The first is the exclusion of judicial review in respect of “matters relating to trial on indictment” by section 29(3) of the Supreme Court Act. It is common ground, and I accept, that a decision as to bail at an early stage of criminal proceedings does not relate to trial on indictment as that expression has been interpreted in cases such as *R v Manchester Crown Court ex parte DPP* [1994] 98 Cr. App. R 461 HL, where Lord Browne-Wilkinson stated that the question to be posed when considering the “trial on indictment” test was as follows:

> ‘Is the decision sought to be reviewed one arising in the issue between the Crown and the defendant formulated by the indictment (including the costs of such issue)?’ … If the answer is ‘no’, the decision of the Crown Court is truly collateral to the indictment of the defendant and judicial review of that decision will not delay his trial: therefore, it may well not be excluded by the section.”

8. M therefore overcomes that barrier.

9. The second jurisdictional question is whether a refusal of bail is susceptible to judicial review in any event. In *R v Croydon Crown Court ex parte Cox* [1997] 1 Cr. App. R 20 it was held in this court that a refusal of bail was not so susceptible. However, the rationale of that decision was the availability of an alternative remedy, namely the possibility which then existed of an application to a High Court judge. Now, not only has that been abolished, but section 17(6)(b) of the Criminal Justice Act 2003 provides:

> “Nothing in this section affects … any right of a person to apply for a writ of habeas corpus or any other prerogative remedy.”

10. I have no doubt that prerogative remedies in that context embrace those set out in section 29(1) of the Supreme

> Court Act 1981 – mandamus, prohibition and certiorari – which are now of course respectively called a mandatory order, a prohibiting order and a quashing order in part 54 of the Civil Procedure Rules. That means that this court now has jurisdiction to review a bail decision by the Crown Court. In the recent case of *Serumaga* [2005] EWCA Crim 370, when sitting in the Court of Appeal Criminal Division, and when specifically considering the exceptional position of a person facing summary proceedings for contempt of court, I may have implied otherwise. However, the matter having arisen more generally and directly in the present case, I can now say that such an implication would be erroneous. Thus, M overcomes the second jurisdiction barrier.
>
> 11. Although we have jurisdiction by reason of section 17(6)(b), I am no doubt that it is a jurisdiction which we should exercise very sparingly indeed. It would be ironic and retrograde if, having abolished a relatively short and simple remedy on the basis that it amounted to wasteful duplication, Parliament has, by a side wind, created a more protracted and expensive remedy of common application."

10. For the purposes of the present claim, two points emerge. The first is the conclusion that the jurisdiction of the court to hear this judicial review claim is not excluded by section 29(3) of the1981 Act. As in *M*'s case, the circumstances in which this case arises are not such that this application for judicial review is any form of collateral attack on the trial process. The second point is that even though the claim falls within the court's jurisdiction, to the extent that the challenge rests on submissions that irrelevant matters were considered, that incorrect weight was given to relevant matters, or that the conclusion reached by the Judge was irrational, the bar for the Claimant is set high. A judge's latitude to decide what is relevant and to weigh such matters in the balance is not to be removed; his conclusions on these matters of evaluation ought not to be second-guessed, save in the clearest case.

(1) Grounds 2 and 3: taking account of irrelevant matters; attaching incorrect weight to relevant matters; irrational conclusion.

11. These grounds are conveniently considered together. The Claimant relies on an accumulation of matters: that the Judge's decision to impose the conditions was either unreasoned or only sparsely reasoned; that such explanation for the decision as might be inferred is insufficient; that, in particular, the Claimant had been on unconditional bail since her first appearance at the Magistrates court in April 2023 without trouble, and by 8 December 2023 when the conditions were imposed nothing had happened to warrant adding conditions to her bail; that the Judge's comments in the email of 20 March 2024 that the Claimant was a "non-UK National" were incorrect; and that the Judge had, during the hearing, clearly been antagonised by Mr Petkovic and that affected his decision to add conditions to the Claimant's bail.

12. Even taking these matters together, I do not consider Grounds 2 or 3 give rise to any arguable case that the Judge's decision was wrong in law. Although the Claimant's bail prior to 8 December 2023 was unconditional, that established no presumption that conditions could not or would not be applied. At all times, the issue for the court remained the one posed at paragraph 2 of Schedule 1 to the Bail Act 1976 and, on the facts of this case, concerned assessment of whether the Claimant would fail to surrender to custody. At the 8 December 2023 hearing the Judge was entitled to consider that matter afresh.

13. It is clear from the transcript that the Judge imposed the residence condition – the requirement that the Claimant live at her home address and notify the court of any change of address, because the trial date had been pushed back to 2024. The requirement that Claimant surrender her passport and travel documents arose in response to counsel informing the court that the Claimant intended to travel to Saudi Arabia for 5 days.

14. My concern on this application is to consider whether there was a rational basis for those decisions. For this purpose, I must have the observations of Maurice Kay LJ in *M*'s case well in mind. In this case, the circumstances I have referred to did provide a sufficient basis for the conditions applied. Neither condition is inherently onerous. There is no evidence to suggest that either has been or is likely to be particularly onerous for the Claimant. Each condition was a sensible precaution in response to circumstances that had changed. The trial date had been pushed back; that was a matter capable of supporting the conclusion that there was substantial ground to believe the Claimant would fail to surrender. The residence condition was proportionate to address that concern. Similarly, once it had been drawn to the court's attention that the Claimant, wished to leave the country to travel, on business, to Saudi Arabia, (a country which has no extradition arrangements with the United Kingdom), that raised the prospect of a failure to surrender that was addressed by the requirement that the Claimant surrender her passport and travel documents. It is quite possible that a different judge on a different occasion might have taken a different course on either or both matters.

However, that is not proof that he decision taken by the Judge in this case was irrational. His decision was not irrational.

15. The further matters relied on in support of Grounds 2 and 3 do not affect my conclusion. One, the alleged failure to give sufficient weight to relevant considerations, comes to no more than repetition of the rationality argument because the submission must be the Judge should have attached greater significance to the fact that since April 2023 the Claimant had surrendered to bail without need for conditions. The weight attaching to this matter was for the Judge to consider in the circumstances as they appeared to him at the hearing on 8 December 2023. As I have said, the Claimant's compliance with her bail until that time, raised no further presumption that conditions should not be attached. Rather, the provisions of the Bail Act 1976 fall to be applied, from time to time, as circumstances develop. As at 8 December 2023 the only matter for the Judge was the one presented by paragraph 2 of Schedule 1 of the 1976 Act. For the reasons already given, the Judge was entitled to weigh matters as he did.

16. The other submission is that the Judge's decision was influenced by irrelevant matters. This submission falls into three parts. The first part is that, looking at the transcript as a whole, both the part of the hearing in the morning and the part in the afternoon, the Judge was short-tempered and did not demonstrate he was open to argument on matters such as whether bail should remain unconditional. This suggestion is not fair. The transcript suggests a certain brusqueness, but this goes no further than the Judge being keen to get

to the point and get through the business before him. It is correct that the part of the transcript dealing with the decision on bail does not reveal elaborate or set-piece submissions on either side. Rather, the transcript shows a judge-led discussion. There is nothing wrong with that approach at all, certainly not in the context of a decision on bail. While the Judge led the discussion (as would be expected), counsel had and took the opportunity to make such points as they wished. The suggestion that the Judge was short-tempered and that affected his evaluation of the matter, leads nowhere. The Judge clearly wanted matters to be dealt with directly and efficiently and he pressed counsel to do the same. There is nothing wrong with that approach and there is nothing to be inferred from it so far as concerns the merits, factual or legal, of the Judge's decision to attach the two conditions.

17. The second part of the submission rests on part of the information provided in the 20 March 2024 email. The Judge's comments in that email refer to the Claimant as a "non-UK National" That is incorrect. The Claimant is British; she holds a British passport; she holds no other nationality. Although the Judge's comment was incorrect, I do not consider it material to the decision to add the conditions. His stated reason for the residence condition concerned the length of time before trial; his decision to require the Claimant to surrender her passport was a response to her being told that she intended to leave the United Kingdom on business.

18. The third part of the submission relies on comments the Judge made to Mr Petkovic at the end of the hearing. These are the matters referred to in the 20

March 2024 email as "the remarks at 39E onwards". What the judge said was as follows.

> "JUDGE SPENCER: Right, Voya Petkovic, it's clear to me. You can hear me? Can you hear me clearly, Madam? I think I detect an attitude. I certainly detect an unpleasant defiance in you, Petkovic. An attitude that somehow because of the serious trial you are facing in Loughborough, this indictment is less important. Let me dispel that notion straight away. These are very serious charges, effectively smuggling some enabled electronic device into prison. Probably at the time when you, Petkovic, were facing serious criminal charges in prison. There seems to be, I hope I'm wrong, a rather casual attitude towards preparation for this trial. That better stop. You will face trial on the 8 April. If you are convicted, you are both looking, in your case, Petkovic at further prison. In your case, Sonya Sumal going to prison. I don't want you to be under any illusions whatsoever about the seriousness of the position you are in. Never be impertinent to me, Petkovic. Otherwise you will suffer. I will find ways of making you suffer. You will stay in custody. You'll be brought to this court on the 8 April to face your trial …"

19. In his comments in the 20 March 2024 email, the Judge described Mr Petkovic's behaviour during the hearing as defiant and abusive. That is a fair description of what appears in the transcript. Mr Petkovic made crude remarks, no doubt intending to goad the Judge and disrupt the hearing. Mr Petkovic succeeded in goading the Judge. The Judge was plainly right to make clear to Mr Petkovic that he was facing serious charges and that Mr Petkovic needed to conduct himself accordingly. However, the Judge's further comment that Mr Petkovic would "suffer" went too far, and was wrong. The submission for the Claimant is that while those comments were made only at the end of the hearing, after bail conditions have been set, they must indicate the Judge's state of mind formed during the hearing which was

inimical not only to Mr Petkovic but also to the Claimant, and influenced the Judge's decision to impose the bail conditions.

20. I do not agree. The Claimant did not misconduct herself during the hearing, only Mr Petkovic. The Judge's frustration was directed to him and I am not prepared to draw an inference that it went further than that. I do consider that the decision to add the two conditions supports any such inference. As already stated, the circumstances presented to the Judge as to the length of time before the trial would start and the Claimant's travel plans are a sufficient explanation of this decisions.

21. For these reasons Grounds 2 and 3 fail.

(2) Ground 1: misapplication of the Bail Act 1976

22. The submission is that the Judge failed to comply with the requirement at section 5(3) of the Bail Act 1976 to "… give reasons for withholding bail or imposing or varying the conditions". This requirement under the Act is clear and it is important. The reasons given do not need to be elaborate. Reasons may be very brief indeed so long as they are sufficient to explain the conclusion reached.

23. I am satisfied that the Judge complied with the section 5(3) obligation so far as concerns the residence requirement. He added the condition explaining that he did so because of the length of time until trial. However, although the

reason for requiring the Claimant to surrender her passport may be inferred without difficulty, the Judge did not state his reason in so many words. That was a failure to meet the requirement in section 5(3) to give reasons. Reasons may be very brief indeed, but they must be given.

24. To this extent, I am satisfied that the Judge did fail to meet the obligation to give reasons. However, I am equally satisfied on the facts of this case that that failure is not sufficient reason to quash the decision to impose the bail conditions. It will be sufficient to make a declaration that, to the extent explained above, the obligation to give reasons was not met.

C. Disposal

25. At this rolled-up hearing, I have had the benefit of full argument on behalf of the Claimant. I consider Grounds 2 and 3 of the claim are unarguable and I refuse permission to apply for judicial review on those grounds. I also refuse permission to apply for judicial review on Ground 1 so far as concerns the residence condition. On the remaining part of Ground 1, the contention that the Judge failed to give reasons for requiring the Claimant to surrender her passport, I grant permission to apply for judicial review and allow the claim, but refuse relief save to the extent of a declaration. Notwithstanding that reasons were not stated for this part of the decision, I am satisfied that the decision to add this requirement was one properly open to the Judge this is not a decision that should be quashed.

26. Lastly, an observation on the way in which the Judge's comments were presented to this court by the Defendant Crown Court when its Acknowledgement of Service was filed. When a court is the defendant in judicial review proceedings, there is no expectation that it will participate in the proceedings. Whether it does is a matter for that court, something that is clear from the pro-forma options presented at Section A of the Acknowledgement of Service form, Form N463. If, however, a defendant court wishes to make representations on any matter, whether factual or legal, it is entitled to do so. If as in this case, the court wishes to make observations on matters of fact it would be preferable for those facts to be set out in Section C of Form N463. The standard form rubric for Section C is a little unsuited for that purpose as it is formulated in terms of stating the reasons for "contesting" a claim. A defendant court may not wish to contest the claim as such, but simply provide information for this court's assistance. That was the intention that lay behind the 20 March 2024 email. However, that point, the infelicity of the wording on Form N463, can quite easily be addressed by appropriate explanation by the defendant court within Section C itself. This is the course of action to be taken on future occasions.