



**THE COURT OF APPEAL**

**(CIVIL)**

**Birmingham P.  
Edwards J.  
Whelan J.**

**Neutral Citation Number: [2019] IECA 175**

**Appeal No: 2019/239**

**High Court Record No: 2019/128 EXT**

**IN THE MATTER OF AN APPEAL FROM A REFUSAL OF AN APPLICATION FOR BAIL**

**BETWEEN/**

**THE MINISTER FOR JUSTICE**

**Respondent**

**And**

**PETRONEL PAL**

**Appellant**

**JUDGMENT of Mr Justice John Edwards delivered on the 27th June 2019.**

**Introduction**

1. In this case the appellant is the subject of a European arrest warrant dated the 4th of December 2017 issued by the state of Romania seeking his rendition for the purpose of prosecuting him in respect of four offences, namely: (i) the creation of an organised criminal group which carries a penalty of three to 10 years imprisonment, (ii) aggravated murder which carries a penalty of 15 to 25 years imprisonment, (iii) attempted aggravated murder, which carries a penalty of 15 to 25 years imprisonment, and (iv) aggravated robbery which carries a penalty of three to 10 years imprisonment

2. An unusual feature of this case is that the Romanian authorities are seeking to prosecute the appellant for offences committed in Ireland. The appellant and a number of other identified Romanian nationals are alleged to have created, and been members of, an organised crime group. The group is alleged to be headed by the appellant's uncle in law, Ionut Anton. It is alleged that in the early hours of the morning of 10th April 2014, the appellant and a number of other identified individuals broke into the apartment of Virgil Busa located at 7 Academy Square, Navan. It is said that they used extreme violence against two other Romanian nationals, Mr Busa and Ionut Mirea. It is also claimed that they stole a laptop, a tablet, a mobile phone and a rucksack. Mr. Busa died from his injuries on 13th April 2014.

3. The European arrest warrant in question was endorsed by the Irish High Court on the 8th of April 2019, and the appellant was arrested on foot of it on the 3rd of May 2019 at 42 Briarwood Lawn, Clonsilla, Dublin 15. He intends to contest his surrender at a section 16 hearing which is currently pending before the High Court. The appellant was remanded in custody following his arrest and he now seeks bail. He does so in circumstances where he is wanted for prosecution and accordingly enjoys the presumption of innocence at this time.

**Applicable legal principles**

4. In these circumstances the legal principles set out in the case of *Minister for Justice Equality and Law Reform v. Fustiac* [2011] IEHC 134 apply. In the *Fustiac* case the High Court stated that in a case where the requested person has not been convicted, the decision of the Supreme Court in *The People (Attorney General) -v- Gilliland* [1985] IR 643 may be regarded as clear authority for the proposition that the fundamental criterion to be applied to bail applications in extradition matters is that set out in *The People (Attorney General) -v- O'Callaghan* [1966] IR 501, namely "is the likelihood of the prisoner attempting to evade justice?". Moreover, in applying that criterion, the court sees of the issue should have regard to those factors identified in *O'Callaghan* as being of potential relevance and consider them to the extent that they are in fact relevant in all the circumstances of the case, as well as any special circumstances tending to magnify the risk of the prisoner absconding. The High Court decided that there was no reason in principle why the same approach should not apply in the case of a person wanted for prosecution on foot of a European arrest warrant.

5. It is for the objecting party to establish a likelihood of the requested person attempting to evade surrender, i.e. to establish that the risk of the appellant absconding exists at the level of probability and not merely at the level of possibility. However, this can be established by inferences to be drawn from both direct and circumstantial evidence. Moreover, it is not for the requested person to prove that he will not abscond. The onus of proof rests at all stages on the objecting party.

**The evidence before the High Court**

6. The application for bail was grounded upon an affidavit of the appellant. This affidavit set out some background to the appellant's arrest on foot of the said European arrest warrant, and the appellant's personal circumstances. The appellant further gave evidence in the course of the bail hearing and submitted to cross-examination.

7. The High Court heard evidence from Detective Garda Eoin Kane that the respondent was objecting to bail in circumstances where there was a belief that the appellant is a flight risk. The witness pointed in the first instance to seriousness of the charges and the fact that if convicted the appellant would face a lengthy term of imprisonment. He further pointed out that the appellant has eight previous convictions in this jurisdiction, dating back to 2011. These include three convictions for possession of equipment for making false instruments, contrary to section 29 of the Criminal Justice (Theft and Fraud offences) Act, 2001 (the Act of 2001), a conviction for possession of certain articles contrary to s. 15 of the Act of 2001, a conviction for handling stolen property contrary to s.17 of the Act of 2001, and three convictions for offences under the Road Traffic Acts. In addition, the appellant has convictions in Romania for causing bodily injury and for a road traffic matter.

8. The witness further told the High Court that gardai believe that the appellant is a member of an organized crime group, operating in this jurisdiction involving thefts. In addition, the appellant had been arrested by gardai on 15 April 2015 under s. 72 of the Criminal Justice Act 2006 on suspicion of being a member of an organized crime group and was subsequently detained under s.50 of the Criminal Justice Act 2007. The court was told that that arrest was linked to an organized criminal group who are involved in prostitution and human trafficking. To date that arrest had not led to any prosecution. However, the appellant's previous convictions for possession of equipment for making false instruments, contrary to s. 29 of the Act of 2001 had arisen in the following context. In 2009 gardai had searched an apartment in Dublin 15 which was being utilized as a brothel. In the course of that search they found equipment which could be used for cloning payment cards and this equipment and a number of chip and payment cards were seized. The court was told that in another search of the appellant's apartment in Dublin 15 conducted on 29 May 2010 gardai had found a large metal detagger which could be used to remove store tags.

9. The High Court was also told that a co-accused named on the same warrant, a Mr. Ion Anton, has eight previous convictions including convictions for conspiracy to cause explosions, and a stolen property, custody or false instruments, theft, and assault causing harm. The appellant is married to his co-accused's niece. These matters, and the appellant's own criminal record, were put forward in support of the state's contention that by reason of the appellant's antecedents, and his criminal associations, there is more of a flight risk in his case than in the case of someone without his record and associates. It was said that the record demonstrates that he has engaged in dishonest conduct in the past, and that he has the skills and facility to create false documentation that you might use in attempting to leave the jurisdiction. His association with another suspected of being engaged in organized crime is a further concerning circumstance.

10. It was not suggested in the course of the evidence of Detective Garda Kane that the appellant had attempted to evade arrest. It was put to him that in fact the appellant was aware of the existence of the warrant, having learned of this from his lawyer in Romania, and was expecting the gardai. It was further asserted that the appellant had notified the Romanian authorities of his whereabouts through his lawyer, although Detective Garda Kane claimed to have no knowledge of this.

11. During the course of Garda Kane's evidence, it was accepted that the appellant resided at the Briarswood address with his wife and child. The court heard that the appellant was working in a construction business and had a PPS number. There was no Garda objection to a proposed independent surety, who was in fact the appellant's employer and who was offering to lodge the sum of €10,000. It is accepted that this was a significant amount.

12. The appellant gave evidence that he would comply with all conditions imposed by the court in the event of being granted bail. He was not challenged on this in cross-examination.

### **The High Court Judge's Ruling**

13. Having heard the evidence, the High Court Judge ruled as follows:

*"The seriousness of the offences is such that, of themselves, the risk of flight has to be recognised as being much greater than where offences are of a much lesser character...*

*...The nature of that conviction just simply gives an enhanced concern as to his ability to organise his own departure from the jurisdiction, even if he surrenders his identity documents. In all the circumstances of the case but, in particular, having regard to the seriousness of the charges and I have listened very carefully to the evidence of Garda Kane and of Mr. Pal, himself, I have taken into account all of the positive things that have been said in support of this application and I have given serious consideration to those matters, the fact that he is living here with his wife, his child, that the proposed surety is the godfather to his child, that he has never taken a bench warrant previously, all of these are undeniably strong factors, in the ordinary course, in support of a bail application but they are, in my view, outweighed by the seriousness of the offences with which this application is concerned and by the character of the conviction which previously was convicted in this jurisdiction.*

*Having regard to all of that and to the fact that there is a hearing scheduled to take place on the 23rd May, I acknowledge it may not take place as soon as that, but it is scheduled for hearing on that date and if Mr. Pal wishes it to proceed on that date there is probably no reason why it shouldn't go ahead on that date, having regard to that and to the seriousness of the offences I am not disposed to grant bail. "*

### **The Grounds of Appeal**

14. The appellant makes the following complaints with respect to the High Court judge's ruling:

- 1) The trial judge erred in law in refusing bail in deciding that the Appellant, if granted bail, would not attend for his trial;
- 2) The trial judge erred in law in failing to afford the Applicant a meaningful presumption of innocence
- 3) The trial judge erred in law in placing a disproportionate reliance on the seriousness of the alleged offence when refusing the appellant bail;
- 4) The trial judge erred in coming to a conclusion that the appellant would have access to forged documents, based on the appellant's previous conviction, when this evidence was not specifically given by Garda Kane;
- 5) The trial judge erred in law in all the circumstances in failing to vindicate the Constitutional rights of the Appellant by failing properly to consider the merits of the application.

6) Having regard to all the circumstances, the history of the matter and the submissions made, the learned High Court Judge erred in law in making the said Order.

### **Discussion and Decision**

15. The court has received helpful written submissions from both sides for which is grateful. In essence, the appellant has contended that there was insufficient evidence before the court informing the view that a denial of bail was appropriate having regard to the *Fustiac/Gilliland* and *O'Callaghan* jurisprudence. There was no evidence before the court establishing any previous propensity on behalf of the appellant not to attend court. He had no history of bench warrants and no convictions under s. 13 of the Criminal Justice Act 1984. The appellant has an employment history in this jurisdiction and is currently in employment. Moreover, he has an established family life in this jurisdiction.

16. We have been told by counsel for the appellant that a substantial legal issue relating to extra territoriality will be litigated in the course of the surrender hearing, and that the matter may not end in the High Court. It was not possible to give the court any indication of the appellant's prospects of success beyond stating that there were weighty legal matters to be canvassed.

17. In response, counsel for the respondent maintains that there was sufficient evidence before the court to permit the High Court judge to determine that the appellant was a flight risk. While the appellant was correct that there was no evidence before the court that the appellant had previously taken bench warrants or that he had been convicted for not answering bail, these matters were not determinative. They were, however, matters to be taken into account, and the High Court judge had specifically referred to the lack of bench warrants as being a strong factor in support of the granting of bail. The High Court judge had also had specific regard to the appellant's family circumstances as being another such factor.

18. Nevertheless, it was said, the High Court judge was entitled to have regard to the seriousness of the offences and the likely penalties on conviction. In this instance the appellant was sought for four serious offences, one of which is the most serious in the criminal calendar, namely murder. The potential penalties that might be imposed in the event of conviction were very significant. It was further submitted that the High Court judge was entitled to have regard to the appellant's previous convictions and the fact that they included offences involving dishonesty and the fabrication of false instruments. The inference to be drawn from the evidence, it is said, is that the appellant is a person who has the knowledge, skills and willingness to be involved in forgery/counterfeiting, with the attendant risk that he will apply his knowledge and skills to the creation of false travel documentation. This magnifies the risk of absconding. It was further submitted that the High Court judge was entitled to have regard to the fact that the appellant associates with persons who have significant previous convictions and who are suspected of being involved in organized crime.

19. It was submitted that the High Court judge had given appropriate consideration to all of the relevant circumstances of the case and that the decision that he made was a reasonable one within the legitimate range of his discretion.

20. Because this is the European arrest warrant case, and such cases are required to be dealt with quickly, it is unlikely that the appellant would spend a very great deal of time in custody awaiting a hearing in the event that bail is denied. Were that to occur the appellant would be entitled to reapply for bail.

21. This court has been provided with a transcript of the hearing from the court below. It is clear that the trial judge approached this matter carefully and conscientiously. I agree with the submissions made by counsel for the respondent. I find no error in how the trial judge dealt with the matter. He applied the correct legal principles and weighed the evidence carefully. His conclusions appear to be reasonable and justified on the evidence. The combination of the seriousness of the offences, potential penalties that might be imposed, the appellant's previous convictions and the nature of them, the appellant's known associations and his possession of the knowledge, skills and willingness to be involved in forgery/counterfeiting cumulatively imply a likelihood to my mind that the appellant will not turn up for his surrender hearing if admitted to bail. While a substantial surety has been advanced, and the appellant has some roots in this jurisdiction, I believe that these considerations are heavily outweighed by the factors that support the view that there is a substantial risk that he will abscond.

22. I would dismiss the appeal.