

**THE HIGH COURT  
JUDICIAL REVIEW**

[2004 No. 396 JR]

**BETWEEN****ALEXSANDR HOFMAN****APPLICANT**

**AND  
JUDGE JOHN COUGHLAN AND  
THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENTS****Judgment of O'Neill J. delivered the 4th day of March, 2005.**

1. By order of 12th May, 2004, O'Donovan J. gave leave to the applicant to apply by way of judicial review for an order of *certiorari* quashing the order of the first named respondent made on 5th May, 2004, whereby he had refused bail to the applicant, and also a declaration that the refusal of the respondent to hear evidence on the issue of whether he was entitled to be admitted to bail was a breach of the applicant's right to constitutional and natural justice and/or the principles of *audi alteram partem* and also a declaration that the first named respondent had acted *ultra vires* in making his order on 5th May, 2000.

2. On 24th May, 2004, O'Donovan J. in a bail application brought by the applicant herein, admitted the applicant to bail for the same charges in respect of which the first named respondent had refused bail in the District Court on 5th May, 2004.

3. The applicant had been brought before the District Court on 19th March, 2004, in respect of these charges and his case was adjourned on several occasions without any application for bail being made until the 5th May, 2004.

4. The applicant's complaints are set out in paragraphs 14 to 16 of the affidavit of Shalom Binchy the solicitor for the applicant and are as follows:

*"14. I say that on the 29th April, 2004, the applicant furnished the court presenter with the address of his friend Mr. Ivan Vasin of 88 Botanic Road, Glasnevin, Dublin 11 to afford the Gardaí the opportunity to verify this address prior to the applicant making an application for bail. The applicant was remanded in custody to Cloverhill District Court on 5th May, 2004, for directions from the Director of Public Prosecutions and to apply for bail.*

*15. I say that the applicant appeared in Cloverhill District Court on 5th May, 2004 and Counsel was instructed to represent the applicant. I say that directions from the Director of Public Prosecutions were not available and say that the applicant was remanded in custody to Cloverhill District Court on 19th May, 2004, for directions from the Director of Public Prosecutions.*

*16. I say that on 5th May, 2004, Counsel informed the Court that the applicant had been in custody past the time allowed by statute for directions from the Director of Public Prosecutions and Counsel asked the judge at the very least to mark the matter for peremptory for the next occasion and the first respondent refused.*

*17. I say that the applicant had been in custody for 47 days to date and I say that according to s. 4 (b) of the Criminal Justice Act 1999 states that – where the prosecutor consents to the accused being sent forward for trial a prosecutor shall within 42 days after the accused first appears in the District Court, is charged with an indictable offence or within any extension of that period granted under sub-s. (3) cause the following documents to be served on the accused or his solicitor, if any, ....*

*19. I say that on 5th May, 2004, no documents were served on the client despite the time limit being exceeded nor was there any application for an extension of time by the prosecutor.*

*20. I say that on 5th May, 2004, counsel for the applicant moved an application for bail. I say that the court presenter, Sergeant Stynes informed the court that the Gardaí from Mountjoy Garda Station had attended 88 Botanic Road, Glasnevin, Dublin 11. Sergeant Stynes advised the court that it was the opinion of the attending Garda that Mr. Ivan Vasin was not living there and in fact the premises was inhabited by people of Nigerian origin. It is important to emphasise that this was said from the well of the court. No evidence had been heard in respect of this claim.*

*21. I say that on 5th May, 2004, Counsel on behalf of the applicant informed the court that the applicant's friend was in court and could confirm to the court that he does indeed live there, but the first named respondent would not let him confirm this address. Despite the fact that the applicant wished to call evidence he was prevented from doing so.*

*22. I also say that the first named respondent read the opinion of the psychiatrist and informed counsel that there was nothing wrong with the applicant and that he wasn't suffering from a psychiatric illness. I also say that counsel informed the court that the applicant had been attending St. Brendan's Hospital on a regular basis and that he had the documentation to prove this if the court wished to see it.*

*23. I say that the first named respondent commented that people cannot attack the Gardaí with cut-throat razors and anyone who does so can stay in jail. I say that Counsel informed the first named respondent that the charge was only an allegation at this stage and again asked him to again consider bail and he refused. I also say that counsel asked the applicant the reasons for his refusal and he replied the seriousness of the charge. I say and believe that this observation by the judge is very unfortunate. It contains with it an implicit assumption that the applicant has been guilty of culpable wrongdoing. I say and believe that it is proper that I indicate that such a comment is often made by the respondent judge even though it is often the subject of objection. I notice that it is widely reported in the media that he turned down applications for bail involving young people alleged to have committed public order offences during the May Day protests. Remanding them all in custody he dismissed concerns from one accused that he had to sit examinations, another that his job would be jeopardised with the observation that he should have thought of that before participating in the protest.*

*24. I said that during the application for bail on behalf of the applicant no inquiry was made by the first named respondent as to the whether the applicant has any warrants in existence or had a history of failing to appear in court*

*or whether there was a likelihood that he wouldn't stand trial or whether there was a likelihood that he would interfere with witnesses.*

*25. I say that the first named respondent refused to allow the applicant's friend confirm to the court that he does live and can live at the address provided to the Gardaí.*

*26. I say that I am instructed that the applicant is an asylum seeker and has psychiatric/ psychological difficulties and has no previous convictions and that there are no warrants in existence for him."*

5. Affidavits were sworn on behalf of the second named respondent by John Forde, a solicitor employed in the offices of the Chief Prosecutions Solicitor and by Brendan Stynes a Garda Sergeant who was the court presenter on 5th May, 2004, when the applicant made his application for bail.

6. Neither of these two affidavits contest the averments in the affidavit of Shalom Binchy set out above.

7. The statement of opposition delivered on behalf of the second named respondent disputes the applicant's case for judicial review on the grounds that in light of the order of O'Donovan J. made the 24th May, 2004, admitting the applicant to bail, that these proceedings are now moot and secondly and without prejudice to the foregoing contention, that the applicant did not suffer any breach of his right to constitutional and natural justice by virtue of the manner in which the first named respondent dealt with his bail application.

8. The account of the conduct of this proceeding given by Mr. Binchy discloses a series of errors on the part of the first named respondent all of which individually and collectively amount to the most flagrant and fundamental breach of the applicant's constitutional right to natural justice and fair procedures.

9. First there was the acceptance by the first named respondent of the unsworn assertion from the well of the court by the court presenter that it was the opinion of other Gardaí that Mr. Ivan Vasin did not live at the preferred address. In circumstances where it must have been clear there was a dispute about this, the first named respondent should have required that this fact be proved by evidence. This was not done.

10. Secondly the refusal to hear evidence in contradiction of the opinion of the court presenter was utterly unjustifiable falling as it does way beneath any acceptable threshold of natural justice.

11. The comment made by the first named respondent as follows: "People cannot attack the Gardaí with cut-throat razors and anyone who does can stay in jail" implies a complete disregard for the presumption of innocence enjoyed by the applicant and indeed it indicates the very reverse, a presumption of guilt together with the imposition of a custodial punishment for the crime alleged, by a denial of bail. An approach such as this to a bail application entirely misconceives the judicial function and is an abuse of judicial power.

12. Finally there was a complete disregard for the normal considerations that would arise on a bail application as directed by the long established authorities on this topic *namely the State v. Purcell* [1926] I.R. 207, *Attorney General v. Patrick Duffy* [1942] I.R. 501 and *the People [Attorney General] v. Rodger O'Callaghan* [1966] I.R. 501. It would appear that the first named respondent paid no attention whatsoever to the issues of whether or not the applicant was likely to abscond or whether there was any likelihood he might interfere with evidence.

13. In summary the conduct by the first named respondent of this bail application stripped the applicant of the protection of his constitutional right to natural justice and fair procedures.

14. Mr. O'Malley for the second named respondent submits that because the applicant was admitted to bail by O'Donovan J. on 24th May, 2004, the relief which is sought in these proceedings cannot now affect the applicant's rights and therefore these proceedings are moot and no relief should be granted.

15. I am satisfied that Mr. O'Malley's submission is well founded and I accept it.

16. It is quite clear that no order or declaration that I can now make will in any kind of practical way alter the rights of the applicant, his right to liberty having been vindicated by O'Donovan J. on 24th May, 2004.

17. Accordingly I must exercise my discretion to refuse the reliefs sought in these proceedings.