

## THE HIGH COURT

Record Number: 2005 No. 58 Ext

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND  
ROBERT OSTROVSKIJ

RESPONDENT

**Judgment of Mr Justice Michael Peart delivered on the 20th December 2005**

1. The applicant was arrested here on foot of a European Arrest Warrant dated 7th July 2005 which issued in the requesting state of Lithuania. The offences relate to the alleged rape of a woman in Vilnius by the applicant and another man on the 29th May 2005.
  2. The applicant would have been still seventeen years of age at the time of the alleged offences. In fact his sister who has given evidence has stated that he was still attending school until the 17th May 2005. He is now just eighteen years of age.
  3. At any rate it appears that some five or six days after the alleged offence occurred, the applicant attended at Vilnius Airport where he purchased a return ticket to fly to Dublin that same day – the return ticket being for the 31st July 2005. At that stage the domestic warrant was not yet issued in Vilnius.
  4. He apparently arrived here on the 5th June 2005. His sister was already residing here at Ballymahon, Co. Longford. It appears from the evidence of Sgt. O'Neill before me that his name did not appear on any government database until almost six months later when he applied for a PPS number on the 24th November 2005. It also appears that the applicant was able to fly here without any passport. He was in possession only of a national identity card.
  5. The evidence has been that he worked on a farm here over the summer months picking strawberries, and that more recently he has been employed, as far as I can recall, at a Kepak premises in Athlone.
  6. The applicant's sister has apparently been living here for a period of about two years. She has a daughter also, but it would appear that her daughter did not arrive here until the 4th November 2005 when the applicant's mother came to live here. They all live in an apartment at Ballymahon now, and I have heard evidence that the applicant assists towards the household budget from his wages.
  7. The applicant's sister gave evidence that the applicant had bought the return ticket to Dublin so that he could return to Vilnius to continue his studies. But in cross-examination she also now says that he has changed his mind about that and will not now return to Vilnius to complete his studies. The applicant himself has not given oral evidence, but has sworn a grounding affidavit (upon which he has not been cross-examined) in which he makes no reference to his intentions about returning to Vilnius to complete his studies or otherwise. His sister has sworn that she can assure the Court that the applicant will not abscond.
  8. Sgt. Martin O'Neill has given evidence also. He was the officer who arrested the applicant on foot of the endorsed European arrest warrant. He is of the view that the applicant will not appear for his extradition hearing. His reasons are that he is a very young man, who when he arrived here was in possession only of a national ID card and yet had no difficulty travelling here. He also points to the fact that the applicant has no long-term ties here, even though his sister and mother reside here now. It appears that the applicant's father still resides in Vilnius. Sgt. O'Neill believes that the applicant may well abscond, and believes that prior to his arrest he was aware of the fact that the authorities were looking for him in relation to the alleged offence, but he accepts that the applicant is a man with no criminal record.
  9. Paul McGarry BL on behalf of the applicant has indicated that there is available a sum of €2000 from the applicant's sister by way of cash bail, and that the applicant would undertake to reside at the present address at Ballymahon until the application for his surrender is determined. He has also stated that the applicant would submit to any signing-on restrictions which might be imposed by the Court.
  10. Micheál P.O'Higgins on the other hand for the respondent submits that the applicant is on the balance of probabilities not likely to appear for the hearing of the application for his surrender. He points to the fact that the applicant left his home country only a matter of days after the date of the alleged offence, and that it is relevant also that the ticket on which he travelled was one bought on the very day of departure at the airport. Mr O'Higgins refers to this fact in order to refute any suggestion that the applicant may have been travelling here by virtue of some pre-arranged plan to visit his sister here. He submits that this is something to which the Court can have regard when considering whether on the balance of probabilities the applicant would turn up for the hearing of the present application. He also refers to the ease with which the applicant came here without documents other than the ID card.
- Conclusions**
11. It is relevant that this application has as its background an application for the surrender of the applicant to his home country on foot of a European arrest warrant. Mr McGarry has submitted that this Court must not make any distinction between a national and a non-national as far as the granting or refusal of bail is concerned. He is certainly correct that a non-national must not be discriminated against on the ground that he is a non-national. But that does not mean that the Court must not have regard to the fact that the applicant's ties here are bound to be less than those of a national who has lived here and put down roots here and so forth. That is simply a reality to which the Court must have regard, and to take it into account is not to discriminate in any unfair way as between a national or non-national.
  12. The Court's duty and obligation is to ensure as far as is reasonably possible that in accordance with the State's obligations under the Framework Decision dated 13th June 2002 to which the 2003 Act, as amended by the 2005 Act gives effect, that in the event that the Court grants an application for the applicant's surrender, the State will be in a position to so surrender the applicant on foot thereof. The Court would have to be satisfied as a matter of probability, having regard to all the circumstances of the case, that the terms and conditions of any bail which may be granted will be sufficient to ensure that the applicant will appear in Court for the application under s. 16 of the Act. What is proposed in the present case is the cash lodgement of €2000 and any signing on condition and residence requirement which may be imposed.
  13. I believe that on the balance of probabilities the applicant came to this country in circumstances where it is reasonable to presume that he was aware that he was either wanted by the authorities in relation to the offence or was likely to be sought in that regard. That is not to in any way take from the applicant the presumption of innocence which he enjoys under our law in relation to

the alleged offence. But bail applications are not heard in a vacuum. There is a background to have regard to, and part of that background is the circumstances in which he left his own country, and also that since matters have developed in the way that they have, his decision not to return to Vilnius on the return ticket which he purchased. I have no doubt that the applicant has no wish to return to Vilnius to deal with the matter for which his surrender is sought.

14. Nevertheless he is entitled to bail here pending the making of an order of surrender if the Court can be satisfied that sufficient safeguards can be put in place to reasonably ensure that he will turn up for the hearing here. The Court must not impose conditions which are more onerous than the case requires. But in the present case I am told that all that is available is the cash lodgement of €2000. No independent surety is available, such as the applicant's employer or other person who might be willing to go surety as some sort of comfort to the Court that he will turn up. Apart from the proposed cash lodgement, there is only his sister's belief that he will certainly attend. Given the Court's experience in these matters, I have no doubt that it is reasonable to require more than a cash lodgement – even in the sum proposed which I am sure represents a very considerable sum to his family.

15. I am also entitled to have regard to the very serious nature of the charge which is the subject of the warrant. That is something to which regard would be had even if this was a matter facing an Irish national. In that light, the sum proposed is not very substantial.

16. I am not satisfied that such a cash lodgement and any other conditions which the Court could impose would be a sufficient assurance of his attendance. In my view this case requires an independent surety in a significant sum. I am prepared to grant bail but only on terms of the applicant's own bond of €5000, of which one third would have to be lodged, and in addition one independent surety in the sum of €10,000 or two sureties in the sum of €5000 each, such sureties to be approved by this Court, together with what I will loosely refer to the usual other conditions. Only in such a manner can I be reasonably satisfied that sufficient safeguards have been put in place to ensure that the State will be in a position to honour its international commitments in the event that the Court makes an order for the surrender of the applicant following the hearing of the application under s. 16 of the Act.