Neutral Citation Number: [2011] IEHC 134

THE HIGH COURT

2011 72 EXT

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT, 2003 (AS AMENDED), AND IN THE MATTER OF AN APPLICATION FOR BAIL

BETWEEN/

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

- AND -

TIBERIUS FUSTIAC

RESPONDENT

JUDGMENT of Mr Justice Edwards delivered on the 6th day of April, 2011.

Introduction

The respondent is a Romanian national and he is the subject of an European Arrest Warrant issued by the state of Romania on the 5th of February 2010. That warrant was received in this jurisdiction on the 6th of January 2011 and was endorsed for execution by the High Court on the 16th of February 2011. The respondent was duly arrested on foot of this warrant on the 21st of March 2011 and was then brought before the High Court in accordance with s.13 of the European Arrest Warrant Act, 2003 (as amended) (hereinafter "the 2003 Act") whereupon the Court, having fixed a date for the purposes of s.16 of the 2003 Act, remanded him in custody to Cloverhill Prison pending the s.16 hearing in the matter. On the same occasion the respondent sought, and was granted, leave to serve short notice upon the applicant of his intention to apply on the 23rd of March 2011 to be admitted to bail. A bail application was then duly served and came on for hearing on the 23rd of March 2011. The applicant objected to bail being granted on the grounds that it was feared that the respondent would seek to evade justice by flight and that he would not turn up for his s.16 hearing. The Court was ultimately persuaded to admit the respondent to bail subject to conditions, and did so, but indicated that as the case had raised an important issue of law which required clarification it would give its reasons later in a reserved judgment. I now give those reasons.

The nature of the European Arrest Warrant in this case

The European Arrest Warrant in question is a prosecution warrant on foot of which the respondent is sought for the purpose of trial in respect of two alleged offences in respect of which paragraph 2 of article 2 of the Framework Decision is invoked by the ticking of the box relating to "trafficking in human beings" in part E (I) of the warrant. The alleged offences in question are, according to information provided in part C of the warrant, each punishable by imprisonment for a maximum period of not less than 3 years under the law of the issuing state. The alleged offence of trafficking in human beings carries a penalty of between 5 and 15 years imprisonment in the issuing state, while the alleged offence of trafficking in minors carries a penalty of between 7 and 18 years imprisonment in the issuing state. Accordingly, and by virtue of the application of s. 38(1)(b), this is *prima facie* (subject to hearing and considering any arguments to the contrary at the s.16 hearing in due course) a case in which correspondence does not require to be demonstrated. However, it is further the Court's provisional view (again, subject to hearing and considering any arguments to the contrary at the s.16 hearing in due course) that in any event the first of the two alleged offences in question (trafficking in human beings) would correspond with a offence under s.4 of the Criminal Law (Human Trafficking) Act, 2008, while the second of those two alleged offences (trafficking in minors) would correspond with a offence under s.3 of the Criminal Law (Human Trafficking) Act, 2008 and possibly also with an offence under s. 3 of the Child Trafficking and Pornography Act 1998 (as amended). These are all serious offences in Irish law carrying potential penalties of up to imprisonment for life upon conviction on indictment.

The affidavit grounding the application

The principle grounding affidavit was sworn herein on the 22nd of March 2011 by the applicant's solicitor, a Ms Niamh Moriarty, who deposes that she is the principal in the firm of Niamh Moriarty & Co, Solicitors, of Parnell Road, Enniscorthy, Co Wexford. I have previously remarked in *Minister for Justice, Equality & Law Reform v Zieliński* [2011] IEHC 45 that strictly speaking the affidavit should have been sworn by the respondent (i.e. the applicant for bail) personally. On this occasion, the court will overlook the irregularity, and the hearsay nature of the evidence, as it did in *Zieliński*, having regard to the fact that English is not the respondent's first language, and the respondent was in custody, and it may therefore have been logistically easier for the solicitor to swear the affidavit based on instructions received. However, the Court would like the message to go out for the benefit of future bail applicants that the affidavit grounding an application for bail in the European Arrest Warrant context should, save in exceptional circumstances, be sworn personally by the person applying for bail, not least so that he/she can be cross-examined on it should cross-examination be deemed necessary or desirable by the (executing) State's legal representatives.

Ms Moriarty deposed, *inter alia*, to the fact that her client is entitled to the presumption of innocence in respect of the alleged offences, the subject matter of the warrant. She further stated that he does not consent to his rendition to Romania on foot of the said European Arrest Warrant and that he intends to contest the pending application to surrender him. She stated that he has not previously applied for bail in these proceedings.

Ms Moriarty further deposed to the fact that the respondent is unemployed and resides at Apartment 5, Abbey Centre, Enniscorthy, Co Wexford, and she stated that that is the address at which he was intending to reside if granted bail.

Ms Moriarty has further deposed to the fact that the respondent has been living in Ireland for the past 9½ years since the 13th of

September 2001, when he came to Ireland with his partner Maria and their son Armin. She states that the respondent is of Roma ethnic origin and that on the 13th of October 2004 he was granted refugee status in Ireland. He alleges that he was persecuted in the past by the police in Romania on account of his ethnicity, and the Court infers, although it is not expressly stated, that he was granted asylum by virtue of having established that owing to a well founded fear of being persecuted for reasons of race, or perhaps membership of a particular social group, or both, he is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of his country of nationality.

Ms Moriarty further deposed that the respondent has many ties to this State and to County Wexford and he has resided in County Wexford since September 2001 and at the address previously mentioned for over two years. He resides there with his partner of 18 years and their four children, ranging in ages from 17 years to 7 years, and with his mother. The three younger children are attending school locally and the youngest child was born in Ireland. They also have one grandson who was born in Ireland. The respondent's mother is 65 years of age and has resided with him, his partner and children for the past four years. His father is deceased. In addition, his partner's mother, father, two sisters, four nieces and one nephew reside in Enniscorthy County Wexford. The respondent's partner also has been granted refugee status. Moreover, she has applied for naturalisation and was due to attend Wexford District Court on the 24th of March 2011 to make a declaration of fidelity to the nation and loyalty to the State.

Ms Moriarty has deposed to her belief that the respondent has no convictions in this jurisdiction other than in respect of minor road traffic matters. He is presently before New Ross District Court in relation to having no road tax in respect of his partner's car and this matter has been adjourned to the 12th of April 2011 for the arrears to be paid.

According to Ms Moriarty the respondent was arrested in or around April 2009 and was questioned by the Gardaí in relation to human trafficking and in relation to an alleged sexual assault on one of the present complainants in Romania. The Gardaí subsequently confirmed that a file had been sent to the DPP in relation to the alleged sexual assault and that in or around September 2010 the DPP had directed that there be no prosecution against the respondent. She exhibits a letter dated the 26th of January 2011 from an Inspector Michael Walsh of New Ross Garda Station confirming this.

At paragraph 22 of her affidavit Ms Moriarty deposed to the following:

> " I further say and believe and have been so advised that the respondent has been aware of the fact and nature of the complaints made against him in Romania since approximately June 2009 and that he instructed me in that regard in about the month of December 2009. I say that the applicant has been aware of the likelihood that a European Arrest Warrant would issue following receipt of legal advice at that time and that he has been aware of the issuing of the European arrest warrant herein since in about the month of December 2010. I said that since then the respondent has remained in residence at Apartment 5, Abbey Court, as aforesaid and has remained in this jurisdiction during all that time in the knowledge of the existence of the said charges and the subsequent issuing of warrant and the charges in respect of which it has been issued. I further say and believe that on 21st of March 2011 the respondent voluntarily attended at the Court appearance of his co-accused Mihai Palico Rendo at Court Number 21, Criminal Courts of Justice, Parkgate Street, Dublin 8 in respect of the application for rendition of his co-accused to Romania on foot of a European Arrest Warrant arising out of the same charges, and that he was arrested by the Gardaí at that time. In the premises, I say and believe that the respondent herein is not a flight risk, in circumstances where at all times he has remained at his residence and put himself in the obvious notice of the Gardaí, in the knowledge of the existence of the warrant herein."

The affidavit concludes by confirming that a surety by way of a €2,000 cash lodgement is available, and that that the respondent is prepared to give the undertakings that are usually required where bail is granted in a matter such as this relating to residence, signing on, surrender of identification and travel documents, not to apply for or procure new identification and travel documents, to attend court when required, and so on.

The Garda objection

It was confirmed to the Court by counsel for the applicant that there was a Garda objection to bail based upon a concern that the respondent would seek to evade justice by flight and that he would not turn up for his s.16 hearing.

The Court then heard oral evidence from Sgt Seán Fallon who told the Court that the basis for the Gardaí's concern was that the offences referred to in the warrant are very serious offences in respect of which the respondent would, if convicted, be likely to receive a lengthy sentence. He therefore had an incentive to flee. Moreover, any condition requiring the surrender of identification and travel documents was unlikely to be effective since persons engaged in people trafficking had easy access to, and as part of their *modus operandi* regularly used, false documentation.

The Legal Issue

The issue that arose in the course of subsequent legal argument, and which has caused the Court to give reasons for its decision in the course of this reserved judgment, concerned whether or not the principles set out in *The People (Attorney General) v O'Callaghan* [1966] I.R. 501 apply in the case of a person whose rendition is sought for the purposes of trial (as opposed to the serving of a sentence), and in particular whether such a person has the benefit of an effective presumption in favour of the granting of bail.

In an *obiter dictum* in my judgment in *Minister for Justice, Equality & Law Reform v Zieliński* [2011] IEHC 45 I expressed the view that I could see no reason why the *O'Callaghan* principles should not apply to bail applications in rendition proceedings under the European Arrest Warrant Act, 2003 in cases where the respondent has not been convicted. It is important to note that these remarks were *obiter* because I was not required to decide that specific issue in *Zieliński*, which case concerned the principles applicable to applications for bail in rendition proceedings under the European Arrest Warrant Act, 2003 in cases where the respondent has already been convicted. However, in the course of my remarks I acknowledged the existence of a judgment of Peart J. in the case of *Minister for Justice, Equality and Law Reform v Ostrovskij* [2005] IEHC 427 that on one view of it suggests the contrary, but noted that that judgment, in turn, makes no reference to the Supreme Court's decision in *People (Attorney General) v Gilliland* in which the *O'Callaghan* principles were held to be applicable to bail applications in extradition proceedings under the Extradition Acts 1965 – 2001 in cases where the respondent has not been convicted. I commented that it was unclear whether *Gilliland* had been cited to, or drawn to the attention of, the learned judge in the *Ostovskij* case. Since then, this Court's attention has been drawn in the course of the legal argument in the present case to a later *ex tempore* judgment of Peart J. delivered on the 28th of February, 2007, in a case of *Minister for*

Justice, Equality and Law Reform v Jiri Vojik (and in respect of which I have been provided with the transcript) in which the learned High Court Judge specifically refers to, and follows, the *Gilliland* decision. Moreover, the transcript in the *Vojik* case makes no reference to the Court's previous decision in *Ostovskij*. The present case provides an opportunity to address any uncertainty as to the legal situation that may exist and to clarify the position for the future.

The Law

Article 12 of the Framework Decision clearly envisages the granting of bail in appropriate cases. It provides:

> *"When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding."*

It is well established at this stage that the jurisdiction of the High court to grant bail in both extradition and rendition matters is an inherent jurisdiction. As I explained in my judgment in *Zieliński* the provisions of the Bail Act, 1997, and in particular s.2 thereof, have no application because s. 1 of the Bail Act, 1997 provides that a reference to "court" within that Act "means any court exercising criminal jurisdiction but does not include court martial". The High Court is not exercising criminal jurisdiction when dealing with cases under the European Arrest Warrant Act 2003.

Although bail is routinely granted by the High Court in this jurisdiction in rendition cases coming before it under the European Arrest Warrant Act 2003, there are two distinct species of cases that may arise for consideration in that context. The first species relates to the cases of persons who are not convicted persons, who enjoy the presumption of innocence, and whose rendition is sought so that they may be put on trial for an alleged offence before a court in the requesting state. The second species concerns the cases of persons who have already been convicted before a court in the requesting state and who, on that account, no longer enjoy the presumption of innocence and whose rendition is sought for one or more of several possible purposes i.e., so that they may be sentenced if not already sentenced and then be made to serve their sentence; alternatively, if they have already been sentenced, so that they may be made to serve out the sentence, alternatively the balance of the sentence, that was imposed upon them.

As previously mentioned, this Court has already considered in the *Zieliński* case what principles should apply to an application for bail by an applicant who comes within the second species of case, i.e., he/she is a convicted person. The Court must now consider the position with respect to an application for bail by an applicant who comes within the first species of case, i.e., he/she is not a convicted person.

While it is true to say that in many respects extradition proceedings under the Extradition Acts 1965 – 2001 are not to be equated to rendition proceedings under the European Arrest Warrant Act, 2003 they share certain similarities at least at a superficial level, and one similarity is that the two distinct species of case that are to be found in rendition proceedings are also to be found in extradition proceedings. The jurisprudence in the extradition context may therefore be helpful.

The Supreme Court has previously considered the issue as to what criterion, or criteria, ought to govern a court seized of an application for bail in one species of extradition proceedings arising under the Extradition Acts 1965 – 2001, namely in a case involving a person who has not been convicted and is required to face trial in the requesting state. It did so in the case of *The People (Attorney General) v James Hildage Gilliland* [1985] I.R. 643.

In the *Gilliland* case the prisoner was in custody in Mountjoy Prison awaiting extradition to the United States on fraud charges. The District Court had earlier ordered his extradition. Having then successfully obtained a conditional order of habeas corpus from the High Court, he sought bail pending the determination of the habeas corpus proceedings. The Attorney General opposed bail, but bail was granted notwithstanding that objection, the learned High Court judge (Barrington J) being of the view that the *O'Callaghan* principles applied, and not being satisfied that the prisoner, if granted bail, would abscond and not be available for his extradition. The Attorney General then appealed to the Supreme Court where he argued that the absconding test should be applied differently in an extradition case. In dismissing the appeal in that case, Henchy J., (with whom Finlay C.J., Griffin, Hederman and McCarthy J.J., unanimously agreed) said (at p. 645 *et seq*):

> "Counsel for the Attorney General has sought to show that that particular test should be applied differently in an extradition case. He points out that in a case such as this the prisoner is being detained so that he will be surrendered to the requesting State, that is to say, so that this State will fulfil its obligations under the extradition treaty. The courts should therefore, it is urged, adopt a stricter approach than is appropriate when bail is applied for by a person in custody while awaiting a trial in this State. More specifically, it is submitted that when a prisoner is detained for extradition he should not be granted bail under what I may call the absconding test unless he discharges the onus of satisfying the court that there is "no real or reasonable possibility" that if granted bail he will not be available for extradition.
>
> I am unable to accept this submission. I fail to see any reason why the absconding test should be applied differently in extradition cases. It is true that in such cases the prisoner is being held so that the State will comply with its obligations under the extradition treaty."

He added:

> "For my part I consider that there is no reason for applying the absconding test any differently in extradition cases as compared with ordinary criminal cases. In an extradition case the State's duty is to take all reasonable steps to ensure that the prisoner will ultimately be available for extradition. In an ordinary criminal case the State's duty is to ensure that the prisoner will be available for his trial. In either case the State's duty must operate in a way that will not conflict with the fundamental right to personal liberty of a person who stands unconvicted of an offence under the law of the State. That right to personal liberty should not be lost save where the loss is necessary for the effectuation of the duty of the State as the guardian of the common good - in the extradition cases the duty normally being to fulfil treaty obligations and in ordinary criminal cases normally to enable the criminal process to advance to a proper trial. If in either case a court is satisfied that there is no real likelihood that the prisoner if granted bail would frustrate the State's duty by absconding, I do not consider that bail should be refused on the absconding test. If it should appear in an extradition case that special circumstances exist which magnify the risk of absconding, such matters go to the onus of proof, but they do not vary the test. The test, in my view, in both types of cases is whether the party resisting the application for bail has satisfied the

> court that there is a likelihood that, if the prisoner is granted bail, he will defeat the ultimate purpose of the imprisonment by absconding. And it has to be borne in mind that in many cases some of the risks of release on bail may be obviated by attaching to the bail appropriately restrictive conditions.

As I stated in *Minister for Justice, Equality & Law Reform v Zieliński* I am satisfied that, in cases where the prisoner has not been convicted, the *Gilliland* case 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] I.R. 501, namely "is there a likelihood of the prisoner attempting to evade justice?". Moreover in applying that criterion, the Court seized of the issue should have regard to those factors identified in *O'Callaghan* as 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.

In my judgment in *Zieliński* I conducted a detailed review of the judgments in the *O'Callaghan* case and having done so, said that those judgments:

> "… make it clear that, in effect, there is a presumption that such a prisoner [an unconvicted prisoner] should be admitted to bail and that bail should only be refused where the State is in a position to rebut that presumption by evidence sufficient to establish a likelihood that the prisoner will attempt to evade justice. There are, of course, many means by which a prisoner might attempt to evade justice, but the main ones are absconding and interfering with witnesses and/or jurors. The rationale for this position is respect for the notion that liberty is a personal right which must be vindicated where possible, particularly in the case of an unconvicted person who is presumed to be innocent. Coupled to this is the notion that a person should not be punished in respect of any matter in respect of which he has not been convicted. It therefore follows that deprivation of liberty must be considered a punishment unless it is necessary to ensure that an accused person will stand his trial."

I have previously stated, and I reiterate, that I can see no reason why the same principles should not apply to bail applications in rendition proceedings under the European Arrest Warrant Act, 2003 in cases where the prisoner has not been convicted.

However, before ruling definitively on the issue it is appropriate to consider the two previous and ostensibly conflicting judgments of the High Court on this issue, namely that in *Minister for Justice, Equality and Law Reform v Ostrovskij* [2005] IEHC 427 and that in *Minister for Justice, Equality and Law Reform v Jiri Vojik* (Unreported, High Court, *ex tempore*, Peart J., 28th February, 2007), and to see if there is any way in which they can be reconciled.

In the course of his judgment in the *Ostrovskij* case Peart J states:

> "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."

The difficulty with this is that it suggests that the respondent bears an onus to satisfy the Court in relation to the issue of bail, i.e., that he will, as a matter of probability, turn up for his s. 16 hearing, a position which conflicts with views expressed both in *O'Callaghan* and in *Gilliland*. In that regard, Henchy J stated in *Gilliland*:

> "I would particularly reject the submission that the onus in regard to this test should rest on the prisoner. Apart from the inherent unfairness in requiring proof of a negative, it is plain that in many cases it would be grossly unfair to expect a prisoner awaiting extradition in a jail in a foreign country to be in a position to adduce evidence to rebut the likelihood of his absconding. Where an application for bail is made by a prisoner, it is for the party resisting that application to put forward such evidence as will enable the court to hold that there is a probability that the prisoner will abscond if granted bail. The discretion of the court hearing the application must necessarily be wide."

It seems clear that in expressing the view that he did in *Ostrovskij* Peart J judge was strongly influenced by the terms of Article 12 of the Framework Decision, and in particular by the second sentence thereof which allows for the possibility of bail (characterised therein as provisional release) but only subject to a proviso "*that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding*". However, he does not appear to have considered any constitutional dimension to the issue and significantly he does not mention the Supreme Court's decision in *The People (Attorney General) v Gilliland*. It is unclear in the circumstances as to whether, but it is thought unlikely that, his attention was drawn to that particular case in the course of legal argument.

While *Gilliland* did not strictly speaking constitute a binding precedent in the *Ostrovskij* case because it concerned bail in the context of extradition proceedings under the Extradition Acts 1965 – 2001 whereas *Ostrovskij* concerned bail in the context of rendition proceedings under the European Arrest Warrant Act 2003, the two procedures do, as I have already stated, have much in common.

It is clear than Peart J was also influenced in *Ostrovskij* by the fact that the State has signed up to specific obligations in the Framework decision, to which effect is given by the 2003 Act, and considered that it is the court's duty in turn to ensure in so far as is reasonably possible that those obligations are discharged, particularly in circumstances where the European Arrest Warrant system is based upon the principle of mutual trust and confidence. However, it is relevant in that regard that the obligations contained in Article 12 of the Framework Decision are subject "t*o the law of the executing member state*" and so they cannot of themselves justify a deviation from well established domestic jurisprudence. In addition, it is important to acknowledge that the principle of mutual trust and confidence also applies, though perhaps less emphasis is placed upon it, in conventional extradition arrangements based upon bi-lateral treaties. In regard to that, the decision in *Gilliland* expressly acknowledges that in an extradition case the State is under a duty to take all reasonable steps to ensure that the prisoner will ultimately be available for extradition. It is equally clear, however, from the *Gilliland* case that Henchy J considered that inter state obligations ought not to trump the fundamental personal right that an unconvicted person has to be at liberty unless the deprivation of that right is absolutely unavoidable. This is clear from Henchy J's endorsement of the *O'Callaghan* principles and his strong remarks rejecting the idea that the prisoner should bear an onus of proving that he was not likely to attempt to evade justice.

As previously stated, in the later case of *Minister for Justice, Equality and Law Reform v Vojik* the Court expressly acknowledged the relevance of, and followed, and applied in the European Arrest Warrant sphere, the decision of the Supreme Court in the *Gilliland* case.

The learned judge quoted liberally from the judgment of Henchy J in *Gilliland* and said:

> "I apply the absconding test in precisely the same way as I would in an ordinary criminal case, as required pursuant to the decision in *Gilliland*. There is no reason why a foreign national should be at any greater disadvantage, simply by being here, being arrested on an extradition (*sic*) warrant, but there is no reason why he should be in any different position as far as bail is concerned."

This Court is satisfied that by following *Gilliland* the decision in *Vojik* correctly represents the law. It is also satisfied that the earlier remarks by the same learned judge in *Ostrovskij*, ostensibly suggesting an approach different to that laid down in *O'Callaghan*, and in particular one which fails to acknowledge an effective presumption in favour of bail in the case of an unconvicted prisoner, should be treated as per incuriam in circumstances where *Gilliland* does not appear to have been drawn to the learned judge's attention at the material time.

Accordingly, and for the avoidance of all doubt, it is the view of this Court that in the case of an unconvicted person whose rendition is being sought by another member state on foot of a European Arrest Warrant the principles laid down in *The People (Attorney General) v O'Callaghan* [1966] I.R. 501 apply and such a person has the benefit of an effective presumption in favour of the granting of bail. Of course, that presumption may be rebutted and, in a case where bail is objected to, the criterion to be applied by the Court in considering whether the presumption is rebutted in the circumstances of the particular case is that set out in *O'Callaghan*'s case, namely "*is there a likelihood of the prisoner attempting to evade justice?*". Moreover in applying that criterion, the Court 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 Court's decision

In the present case the evidence before the Court suggests that the risk of the respondent absconding exists only at the level of possibility and not at the level of probability. The respondent and his partner have been in Ireland for nearly ten years. He has no criminal record bar minor road traffic convictions. Although he is wanted on serious charges the Court must have regard to his presumption of innocence. Accordingly he is a person against whom there are merely allegations which form the basis of the criminal charges referred to in the European Arrest Warrant. He has not been convicted of those charges. The Court accepts that he has an extensive family network in this country. He has known about the Romanian allegations since 2009, and about the European Arrest Warrant in this case since 2010. He has not gone to ground nor has he gone into hiding or sought to conceal himself. On the contrary he has lived openly and has put himself in the obvious notice of the Gardaí. Moreover, there is no evidence that he has ever personally been in possession of false travel or identity documents, although the Court acknowledges the legitimacy of the Garda worries in that regard but these are theoretical and not evidence based in so far as this respondent is concerned.

The Court is satisfied that in the circumstances of the present case the effective presumption in favour of bail has not been rebutted and the Court has been disposed to admit the respondent to bail subject to conditions.