Neutral Citation Number: [2019] EWHC 525 (Admin)

Case No: CO/1569/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/03/2019

Before :

MRS JUSTICE WHIPPLE

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Between :

Bogden Alexander Adamescu	**Appellant**
- and -	
Bucharest Appeal Court Criminal Division, Romania	**Respondent**

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- -

Alun Jones QC, Christopher Harris and Ben Cooper (instructed by **Karen Todner**) for the **Appellant**
Tim Owen QC and Daniel Sternberg (instructed by **CPS Extradition Unit**) for the **Respondent**

Hearing date: 28th February 2019

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Approved Judgment

Mrs Justice Whipple:

Background

1. The appellant, as I shall refer to him, is a German national who faces extradition to Romania. The EAW was issued as long ago as 6 June 2016 and was certified by the NCA on 9 June 2016. The EAW is an accusation warrant in relation to two charges of bribery of Romanian judges, for which the maximum penalty under Romanian law is 5 years.

2. The background to this matter is set out in the judgment of Kerr J dated 9 April 2018, paragraphs 2 to 4. I do not repeat it here.

3. There are two issues before me today: (1) permission to appeal; and (2) bail.

Permission to appeal

4. The appellant appealed the EAW. His appeal was dismissed on 13 April 2018 by District Judge (Magistrates' Court) John Zani sitting in the Westminster Magistrates' Court.

5. The appellant applied to this court for permission to appeal. Perfected Grounds of Appeal were lodged by counsel then instructed (not the same counsel as have appeared before me) on 3 August 2018, advancing six grounds of appeal. That document runs to 173 paragraphs of single-spaced type over 40 pages: its length and density are not helpful.

6. Permission to appeal was refused on the papers by Laing J on 29 July 2018 on all six grounds.

7. On 2 August 2018, the appellant applied to renew the application for permission. The renewal notice indicated that the same grounds were relied on, but a substantial amount of additional material was put before the Court (and has continued to be put before the Court since then) in support of the renewed application.

8. That renewed application came before King J on 1 November 2018. Because of the late service of evidence by the appellant, he adjourned the application on directions. Since that hearing, a large amount of further material has been submitted by the appellant in support of his grounds, which has been answered to some extent by the respondent.

9. Before addressing the merits of the application which now comes before me, I wish to comment on the state of this case, which is, as I have said above, still at the pre-permission stage. The issues raised on appeal are not particularly complex, although the appellant submits that the picture in relation to some aspects of this appeal, particularly prison conditions in Romania and the coherence of the legal system in that jurisdiction, is evolving. There are now many, many papers before this Court – approximately 18 lever arch files are before me. It took me a full day to read into the case and still a number of issues remained unclear to me until the hearing. I will give directions later which are driven, in large part, by my sense that this case needs to be brought under control.

10. Since the matter was last before King J, the appellant's advisors have recast their grounds of appeal. In their revised submissions in support of the application for leave to appeal dated 19 November 2018, the appellant adhered to the existing six grounds and added an additional two grounds bringing the total to eight. In the skeleton argument dated 12 February 2019, lodged in advance of this hearing, the appellant confirmed that grounds 6 to 8 are no longer pursued.

Grounds of Appeal

11. Accordingly, this application concerns the first five grounds which were before Laing J and before King J, which are listed in the appellant's skeleton for this hearing, and are as follows:

    1. Abuse of process: the lower court erred in refusing to stay the proceedings as an abuse of process in light of the arbitral tribunal's recommendation under Article 47 of the ICSID Convention that the extradition proceedings either be stayed or withdrawn pending the final decision of that tribunal (this is the "abuse of process" ground);

    2. Extraneous considerations: the lower court erred in deciding that the Applicant's extradition was not barred by section 13(a) of the Act;

    3. Extraneous considerations: the lower court erred in deciding that the Applicant's extradition was not barred by section 13(b) of the Act;

    4. Human Rights: the lower court erred in deciding that the extradition would not be incompatible with the Applicant's rights under Article 6 ECHR (section 21A(1)(a) of the Act). (Grounds 2, 3 and 4 can be taken together as the "political motivation and Article 6" grounds.)

    5. Article 3: the lower court erred in deciding that the extradition would not be incompatible with the Applicant's rights under Article 3 ECHR (this is the "article 3" ground).

12. All other grounds have now been abandoned.

Article 3 ground, Ground 5

13. I take the article 3 ground first in sequence. In advance of the hearing, I asked the parties to consider whether this appeal, or any part of it, should be stayed pending the outcome of two other joined cases which are listed for hearing in the Divisional Court on 27 March 2019. Those cases also raise issues relating to the adequacy of prison conditions in Romania and the reliability of assurances by the Romanian authorities in individual cases. Those cases are: *The Baia Mare Court Romania v Stephan Varga* CO/2784/2018 and *Turcanu v Targu-Jui Law Court* CO/3623/2018.

14. Mr Jones QC, with Mr Harris and Mr Cooper for the appellant, submitted that I should, in light of the grant of permission in those cases, also grant permission in this case and direct this case to be joined to those cases for hearing. Mr Jones argued that this case raises similar issues to those cases, at least so far as article 3 is concerned, but that this case is much stronger than either of those cases because this appeal is not limited to article 3 alone but raises wider issues relating to the coherence of the legal system in

Romania generally (by means of the political motivation and article 6 grounds); and further is supported by extensive witness evidence to corroborate the case that Romania does not abide by its assurances in fact, which witnesses the appellant wishes to call in this appeal.

15. By contrast, Mr Owen QC with Mr Sternberg for the respondent, submit that permission would probably not have been granted in either of *Varga* or *Turcanu* if the court at the permission hearing had had the advantage of seeing the Divisional Court's judgment in *Scerbatchi v First District of Bucharest* [2018] EWHC 3612 (Admin) handed down on 21 December 2018; further, the evidence on which the appellant now seeks to rely has been answered by the Romanian authorities, and is not on analysis determinative of this appeal; specifically, to the extent that the appellant seeks to rely on expert evidence from Dr Chirita, his evidence was rejected by the domestic court in *Scerbatchi.* For these and other reasons, the respondent invites me to refuse permission to appeal on the article 3 ground.

16. In my judgment, the article 3 ground should plainly be stayed pending the outcome of *Varga* and *Turcanu.* The issue of permission on that ground is better and more efficiently considered once the court has given judgment in those joined cases. I consider it premature to make a decision one way or another on permission today. To answer Mr Jones' point, even if I were minded to grant permission (which I am not), it is obviously impracticable for this case to be joined with the other two cases for hearing: this case is a very long way from being "in shape" for any substantive hearing and it is undesirable for the other cases to wait for this one to catch up. Further, there is a significant issue to be resolved in this case, *if* permission is granted, as to what sort of appeal hearing should take place: Mr Jones argues for a full *de novo* hearing, with witnesses to be called, over a period of 3 days or so, before the Divisional Court; whether that is the right approach will require careful consideration in due course, *if* permission is granted on the merits.

17. As I indicated at the hearing, Ground 5 (the article 3 ground) is therefore stayed pending the outcome of *Varga* and *Turcanu.*

Political motivation and article 6: grounds 2, 3 and 4

18. I turn next to the political motivation and article 6 grounds. In summary, it is the appellant's case that he is being extradited to face accusations which are part of a politically-motivated campaign, by the former prime minister of Romania, Mr Victor Ponta, initially against the appellant's father Mr Dan Adamescu who died in prison in Romania on 24 January 2017, and now against the appellant. These grounds also rely on evidence which has been submitted to the Court from various witnesses, some of which was before DJ Zani but which the appellant says was given insufficient weight, some of which post-dates DJ Zani's judgment. The point made by the appellant in his skeleton argument is that this evidence, taken as a whole, demonstrates a "political, constitutional and legal crisis in Romania" such that the appellant should not be returned to that country to face trial. If these grounds are made out, then plainly they will have implications far beyond the bounds of this case; as Mr Owen pointed out, the logical end point of these grounds, if they succeed, may be that no one can be sent back to Romania to face justice, in any circumstances.

19. Here too the appellant seeks permission today, and the respondent resists, suggesting that I should refuse permission.

20. In my judgment, these grounds should be adjourned on similar terms to the article 3 ground. I accept that these grounds are not raised in and are unlikely to be affected directly by the outcome in *Varga* and *Turcanu.* But these grounds should be considered at the same time as the article 3 ground is considered for permission, because there is a point at which the new evidence on which the appellant seeks to rely in relation to all these grounds merges: the appellant's argument, at a high level of abstraction, is that there is a complete break-down of the rule of law in Romania; if that argument is made out, then it potentially impacts not only on the motivation for the extradition request and Romania's ability to comply with article 6, but also on the reliability of state assurances in respect of article 3 compliance.

21. Further and in any event, an adjournment of these grounds would permit the appellant to organise and present its case more efficiently and for that further reason, adjournment is convenient.

22. As I indicated at the hearing, Grounds 2 to 4 (the political motivation and article 6 grounds) are therefore stayed pending the outcome of *Varga* and *Turcanu.*

Abuse of Process

23. Finally, I come to the abuse of process ground. This is discrete from the other grounds. This ground is outlined at paragraphs 36 to 44 of the Perfected Grounds dated 3 May 2018. It is maintained without further expansion in the revised submissions dated 19 November 2018 (para 9). It is maintained in the skeleton argument for today's hearing without expansion (para 19), but with a cross-reference to a separate skeleton argument, which is the skeleton argument authored by Mr Harris dated 23 October 2018 which deals with the decision of the CJEU in Case C-286/16 *Slovak Republic v Achmea BV* ECLI:EU:C:2018:158, reported at [2018] 4 WLR 87. At the hearing, I was briefly addressed on this ground and Mr Jones drew my attention in particular to the relevant passages in the Perfected Grounds. Following argument, I indicated at the hearing that I was not persuaded that there was merit in this ground, and I refused permission to appeal on this ground, indicating that my reasons would follow.

24. Since the hearing, on 4 March 2019 (Monday of this week), the appellant by Mr Jones has provided supplementary written submissions on abuse of process. Mr Jones invites me to stay this ground alongside the article 3 ground and the political motivation and article 6 grounds. This was not an application made at the hearing. The basis for seeking to rely on the further supplementary submissions is that Mr Jones was not well at the hearing last week and his client would have preferred the abuse of process issue to be argued more fully. For my part, I was content with his presentation of the abuse of process argument by reference to the written submissions, but I am willing in the unusual circumstances of this request to accept his supplementary submissions, which I have read. They have not been answered by the respondent.

25. The facts which underpin this ground can be summarised as follows: there is an ongoing dispute between Nova Group Investments BV ("Nova") and Romania which has been submitted to arbitration by the International Centre for the Settlement of International Disputes ("ICSID") pursuant to the Convention on the Settlement of Investment

Disputes between States and Nationals of Other States dated 18 March 1956, 575 159 (the "ICSID Convention"). The appellant is the sole director of Nova, and its main witness in the arbitration. The appellant challenged the domestic arrest warrant in the Romanian courts, given the existence of the ICSID arbitration, but that challenge failed. It was dismissed by the Romanian Court of Appeal on 25 January 2017. Within the arbitration proceedings, Nova applied for provisional measures under Article 47 of the ICSID Convention. That resulted in order No 7, the "Provisional Measures Order" or "PMO" dated 29 March 2017. The PMO was made following a two-day hearing before the ICSID tribunal sitting in London at which the appellant gave evidence. The relevant part of the PMO contained the ICSID tribunal's recommendation that Romania should withdraw the EAW and refrain from reissuing it or any other EAW until the final award in the arbitration is delivered. Romania has not withdrawn the EAW.

26. That led to an application to the Westminster Magistrates' Court, seized of the extradition request, to stay the extradition proceedings pending the conclusion of the arbitration, on grounds that to proceed would be an abuse of process. DJ Zani rejected that application in a reasoned judgment handed down on 23 August 2017 (reasons given at paragraphs 94-101 in particular) (the "abuse of process decision"). DJ Zani reminded himself of the law applying to abuse of process arguments; he noted the consensual basis of Romania's participation in the ICSID Convention, that Romania maintained that the PMO should not have been made in respect of ongoing criminal proceedings and that Romania recognised that it could be penalised by the ICSID tribunal for continuing with these EAW proceedings notwithstanding the existence of the PMO. He concluded that the PMO was not binding on the magistrates' court, the appellant was not a party to the arbitration directly but was merely a witness for one of the parties, previous authority relied on by the appellant could be distinguished, it was a matter for the requesting authority whether to proceed with extradition in light of the PMO, that there were no reasonable grounds for suspecting that the requesting authority was abusing the procedures of the domestic court, that there would be no prejudice to the appellant (as opposed to Nova) in continuing to determine the extradition request, and that by continuing to deal with the extradition request the domestic court was not facilitating any alleged breach of the PMO.

27. The appellant issued an application for judicial review of the abuse of process decision in the Administrative Court but was refused permission for judicial review, on grounds (so I was informed) that he would have an alternative remedy available to him in the event that an extradition order was made, namely the statutory right of appeal against that order. Accordingly, the appellant now seeks permission to appeal against DJ Zani's ruling on grounds that DJ Zani was wrong to conclude that the extradition proceedings did not constitute an abuse of process in light of the PMO.

28. The appellant has over time pursued a number of lines of argument in relation to abuse of process. A substantial amount of energy has been focussed on the *Achmea* argument, and this was the aspect considered by Laing J in refusing permission. That point has rather fallen away before me, in light of the respondent's acceptance that *if* the only issue raised was the applicability of that judgment to the facts of this case, that might be an issue suitable for the grant of permission. But *Achmea* was, in the respondent's submission, irrelevant because the abuse of process ground failed before it got there for other reasons which had been corrected identified by DJ Zani. Thus, the appellant has

before me concentrated on those other aspects of his challenge. These too have been developed over many pages and in different ways.

29. The appellant's central argument is that the PMO was binding on Romania as a matter of international law and Romania should therefore act in conformity with it. DJ Zani had been wrong to approach this as an issue dependent on whether the PMO was directly binding on the magistrates' court – that was not the issue. For Romania to proceed with extradition in apparent defiance of the PMO would be unfair to the appellant. The 2003 Act and case law favoured the appellant's arguments and warranted the grant of permission, or at least that this ground should be stayed alongside the other grounds for determination after *Varga* and *Turcanu* were determined. Finally, it was suggested that the respondent itself had suggested that this ground was connected evidentially with the other grounds which was a further reason why it should be adjourned with the others.

30. The respondent's case is set out in the submissions on application for leave to appeal dated 18 May 2018, paras 20-25 and the respondent's reply to the applicant's revised submissions dated 21 December 2018, paras 31-33. The respondent makes the point that the PMO was made after the EAW was issued and the appeal lodged by the appellant. But more fundamentally, the respondent argues that the recommendations of an international arbitral tribunal cannot oust a criminal process which is itself the creation of EU law and implemented into domestic law by means of primary statute. The PMO at its highest could only bind the parties to the arbitration, which did not include the appellant who was merely a witness for and director of Nova. Romania maintained the EAW even in light of the ICSID arbitration proceedings, a decision which had been upheld by the Romanian courts on challenge by the appellant in that jurisdiction. The matters relied on by the appellant before the ICSID tribunal were anyway better addressed under the other grounds of appeal, namely the political motivation and article 6 grounds rather than by way of an abuse argument. DJ Zani's decision not to stay the extradition was a decision which was open to him on the facts and was correct in law.

31. I am persuaded that the respondent's arguments are correct, and that permission should be refused on this ground which I do not consider to be arguable. DJ Zani was entitled to refuse the appellant's request for a stay of the extradition request. That request was pursued under a well-established machinery with origins in EU law, implemented by the Act. The PMO, issued by an international arbitral tribunal which was seized of an arbitration in which the appellant was not even a party, could not oust that process or properly cause the extradition process to be halted. Enforcement of the PMO is a matter for the ICSID tribunal when it gives its final award (which it has not yet done) and not for the magistrates' court. The right of the Romanian state to maintain this EAW alongside the ICSID arbitration proceedings is ultimately a matter for the courts of Romania to determine, and those courts have dismissed the appellant's challenge. The appellant's own position is not affected by the ICSID arbitration directly, because he is not a party to it; nor will he, personally, suffer prejudice as a result of his extradition proceeding alongside the ICSID arbitration because it is Nova's interests which may thereby be compromised, and Nova is an entity separate from the appellant. I do not accept that this ground has any real cross over with the other grounds which are adjourned, nor that the respondent has at any stage suggested that there is such a cross over.

32. The merits of this ground are not established. I can see no advantage to leaving this matter over for resolution at any future hearing; the reasons for adjourning the other grounds do not touch this ground.

33. Further and in any event, and as I shall shortly explain, I have decided to release the appellant on bail. He can, while on bail, assist in Nova's engagement in the ICSID arbitration. The abuse argument weakens even further in light of that development.

34. As indicated at the hearing, I therefore refuse permission on the abuse of process ground.

Conclusion on permission

35. In summary, therefore, permission is refused on ground 1, and the application for permission to appeal on grounds 2, 3, 4 and 5 is stayed pending the outcome of *Varga* and *Turcanu.*

Directions

36. I had indicated my conclusions on permission at the hearing last Thursday (28 February 2019). Consequential directions were discussed. The parties were content that the appellant should have 21 days after the judgment in *Varga* and *Turcanu* is handed down to indicate to the Court whether he wished to pursue the application for permission to appeal in light of that judgment and if so on what grounds.

37. If the application for permission to appeal is to be pursued, I make the following additional directions.

38. The appellant must within the 21-day timeframe already indicated:

    a) submit a single, composite skeleton which deals with all points relevant to the grant of permission; that skeleton should not cross refer to other skeleton arguments or submissions previously filed but for convenience should set out the arguments for the Court in one place. I encourage brevity.

    b) submit a single short document setting out the grounds of appeal. To date, the grounds have been developed on a rolling basis by a series of submission and skeletons. This will not do: see *R (Talpada) v SSHD* [2018] EWCA Civ 841 at paragraphs 68-69.

    c) submit a separate document which complies with the direction given by King J as long ago as 1 November 2018, that the appellant should provide "justification in respect of each individual piece of evidence (such individual piece of evidence to be separately identified in a list showing its location within the bundles) for its submission as fresh evidence by reference to the condition set out in section 27(4)(a)(b)(c) of the Act and the guidance given in *Hungary v Fenyvasi* [2009] EWHC 231". The list should be in the form of a Scott Schedule provided electronically to the respondent to enable the respondent to answer it; that document should in addition to the details required by King J indicate which individual pieces of evidence, if any, the appellant seeks

to adduce by way of oral evidence tendered for cross examination at the substantive appeal if permission were to be granted.

39. Any further evidence upon which the appellant seeks to rely should be submitted at the same time as the documents referred to in the previous paragraph and should be included in the Scott Schedule I have directed.

40. The respondent has 28 days to respond to the appellant's skeleton and accompanying documents by way of:

    a) Composite skeleton which should set out all the respondent's arguments in one place;

    b) A response to the appellant's Scott Schedule (by way of additional comments on the appellant's document);

    c) Any further evidence.

41. The parties should then liaise with a view to submitting within 21 days thereafter:

    a) a single joint core bundle for the renewed application for permission to appeal on grounds 2, 3, 4 and 5;

    b) a single joint list of essential reading in advance of the renewal hearing;

    c) an agreed time estimate for judicial pre-reading, I would suggest one day, at least;. and

    d) an agreed time estimate for the hearing.

42. There is liberty to apply on notice to the other side if these directions require variation. I encourage the parties to seek to agree any such variation before the Court is approached.

Bail

43. The appellant also applies for bail by application dated 14 January 2019. That application is before me, having been adjourned to today's hearing by Holgate J on 22 January 2019. The appellant offers to abide by various conditions, including a residence condition, security of £400,000, surety of £25,000 from Lord Robathan, surety of £10,000 from Prof Tim Evans, a 24 hour tagged electronic curfew, retention of his passport and the passports of his wife and three children by the police, that he will not apply for an international travel document and that his mobile phone will be on at all times.

44. The background to the appellant's detention is this: he was arrested on the EAW on 13 June 2016 in London, and granted bail the following day, 14 June 2016, by the Westminster Magistrates Court. DJ Zani dismissed the abuse application on 23 August 2017 and the appeal proceeded to hearing. That appeal went part heard and ran into the early part of 2018. On 30 January 2018, during the course of the appeal hearing in the Westminster Magistrates' Court, the appellant produced a letter purporting to come from an official organ of the Romanian state which appeared to undermine the

reliability of assurances given by Romania on 15 November 2017 because it appeared to suggest that the appellant would be accorded less space than was required to meet the article 3 threshold. DJ Zani found that that document was a forgery. On 2 March 2018, after further hearings and of his own accord, he remanded the appellant in custody, where he has remained ever since.

45. Bail applications came before DJ Zani on 6 March 2018 and 23 March 2018. Both were refused. A third bail application came before Kerr J in the High Court. He heard evidence from the appellant in relation to the document but rejected the appellant's evidence and on 29 March 2018 refused bail. He found that there were substantial grounds for believing that the appellant was complicit in having produced a forged document to the Court to improve his case. Kerr J went on to say that there were substantial grounds for believing that the defendant, if released on bail, would fail to surrender or interfere with witnesses or otherwise obstruct the course of justice. His reasons were given at paragraphs 51 to 54 of his judgment.

46. A further bail application was made to DJ Zani on 14 December 2018. DJ Zani refused bail. I have not been provided with a transcript or note of that judgment but I do have a witness statement of Ms Todner, the appellant's solicitor, dated 11 January 2019 in which she records what happened at that hearing; she says that DJ Zani concluded that there was no reason to revise his previous decision and he refused bail on the basis of the likelihood of failing to surrender and possibly interference with witnesses. She does not record any more detailed reasoning.

47. Before me, Ms Todner has submitted further witness evidence (statement dated 26 February 2019) which confirms, amongst other things, that the appellant continues to be on ACCT (Assessed Care in Custody Teamwork) and remains on suicide watch at Wandsworth prison, where he is remanded. I was also taken to the psychiatric report prepared by Dr Juli Crocombe dated 11 July 2018 which suggests that the appellant is at extremely high risk of suicide.

48. Mr Jones submits that the time has now come to release the appellant from custody where he has been for almost a year already, which equates to a two-year sentence in domestic law, in the context of an extradition request for offences which carry a five year maximum term. His continued detention is disproportionate. Further, the risk of flight is very low, given that his family are here and given the proposed bail conditions. He has significant mental health issues and a possible diagnosis of autistic spectrum disorder, which could be better managed or treated in the community.

49. Mr Owen did not press the argument taken in his bail skeleton argument dated 18 January 2018 relating to jurisdiction: he accepts that this court has jurisdiction to consider bail. Further, Mr Owen very fairly accepts that the fact that the appellant has already been held in custody for one year is a relevant circumstance which the court is entitled to treat as a material change of circumstances when determining this application. Mr Owen nonetheless maintains his objection to bail on the basis that the offences for which extradition is sought are serious and if the appellant is convicted, he faces a lengthy term of imprisonment, that he has already interfered with the course of justice by submitting a forged document, that his personal problems can be adequately managed in the prison estate, and that his application for bail is premature given that permission has still not been determined.

50. The law is not in dispute. By s 22(1A) of the Criminal Justice Act 1967 the test which is applicable under section 4 of and Schedule 1 to the Bail Act 1976 as amended is applicable to extradition proceedings. The ordinary position under section 4 is that a person is entitled to bail, but that is subject to the exceptions in Schedule 1, which applies where there are substantial grounds for believing that the defendant, if released on bail, whether subject to conditions or not, would fail to surrender to custody, would commit an offence while on bail, or would interfere with witnesses or otherwise obstruct the course of justice.

51. It is true that DJ Zani's and Kerr J's central reason for refusing bail still holds good: by the forged document, the appellant has shown himself to be willing to interfere with the course of justice in order to improve his position, and thus a risk still remains that he will seek to abscond or take some other act which will obstruct the course of justice, if he is released on bail.

52. However, it is relevant that the appellant has now spent almost a year in custody. Because of that, the position is materially different from when Kerr J looked at it in April 2018, at which time the appellant had been in custody for around one month only; Kerr J could justifiably have assumed that any application for permission to appeal would be resolved in the near future. In fact, for reasons outlined above, that has not occurred.

53. As things now stand, I have outlined a timetable which is triggered only once the Divisional Court gives judgment in *Varga* and *Turcanu.* I cannot know when that will be, but April 2019 would be the earliest that could be expected. If the application for permission to appeal is maintained there will then be an exchange of submissions and other documents and papers will be prepared for the Court, which will take a couple of months, and then the case will need to find its place in the court's busy list. This matter is not going to be concluded quickly – indeed, it does not seem that anything is going to happen in this case for some months yet. And so, the question arises quite simply, whether the time has come to release the appellant from custody, balancing all the facts and issues in this case.

54. In my judgment, that time has come. In light of matters discussed above, it is no longer proportionate for bail to be withheld. Although the appellant does pose some flight risk given his previous behaviour, as Kerr J identified, I consider that risk can be adequately managed for the foreseeable future by the stringent conditions which are offered, all of which I am willing to accept.

55. I add for the sake of completeness that I am not persuaded that his personal difficulties are or would have been a basis for granting bail because I accept that he was being adequately cared for and treated by the prison authorities.

56. He must know that if he breaches his conditions of bail, he may be recalled to custody and may face a separate punishment on the breach, in addition.

57. Accordingly, I grant the appellant bail on the conditions offered pending the outcome of his appeal and subject to further order of the Court.