

THE SPECIAL IMMIGRATION APPEALS COMMISSION

Field House
Breams Buildings
London,
EC4A 1WR

Date: 8th May 2007

Before :

MR JUSTICE NEWMAN
JUDITH GLEESON
and JAMES DALY

Between :

OO

Appellant

- and -

**THE SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Respondent

REASONS FOR REFUSAL OF BAIL ON 1ST MAY 2007

Mr Edwards Grieves (instructed by Birnberg Peirce & Partners) appeared on behalf of the
Appellant

Mr Robert Palmer (instructed by Treasury Solicitor) appeared on behalf of the Respondent

Hearing date: 1st May 2007

Mr Justice Newman :

1. There have been a number of previous applications in connection with the grant of bail to the appellant. On 11th January 2007 a measure of agreement was reached between the Secretary of State and the lawyer acting for the appellant. However, it has to be noted that the nature of the release from custody then under consideration was limited to meeting the desirability of the appellant being referred to a rehabilitation clinic, owing to his serious ill health and possible memory loss. It had nothing to do with a possibility that the appellant could be released to his home.
2. At an earlier date (May-June 2006) the appellant suffered a subarachnoid haemorrhage and was released to hospital for treatment, upon strict visiting conditions. This release gave rise to difficulty and the Commission had to consider an application by the Secretary of State to prohibit visits from a female alleged to have been long treated as a “member of the family”. Her visits were prohibited. Again this episode had nothing to do with the possibility that the appellant should be released to his home.
3. It transpired that it was impossible to implement a referral to a rehabilitation unit. As a result, the appellant has remained in Belmarsh where he is receiving a high level of medical care and the benefit of 24 hour care when required.
4. The material before the Commission demonstrates a significant measure of difference between the various consultants who have given reports on the appellant’s medical condition and there exists a body of opinion casting doubt on the genuineness and extent of his memory loss.

5. Against this background, Mr Grieves, on behalf of the appellant, submits that the appellant should be released on bail to his home. He points to the following:
- (1) the earlier bail considerations which he contends amount to concessions by the Secretary of State, which weaken the national security risk;
 - (2) the inability of the Security Service to make an up-to-date assessment of the appellant's mental health and to provide a definitive assessment whether he would or would not pose a threat to national security;
 - (3) that a true view of the source of the security risk, which it is said he could present, is that it depends upon the possibility of direct communication with individuals associated with or members of an Islamic extremist group, Jama'at Al-Muslimeen ("JM");
 - (4) the fact that JM has not been proscribed by the Secretary of State;
 - (5) the appellant's health and the impact this would be likely to have on his ability to reinvigorate his role as a "spiritual leader" of JM;
 - (6) the willingness and ability of his wife to maintain highly secure conditions in the home; and
 - (7) the weakness of the security case.
6. On 10th April 2006 Ouseley J. found that the appellant's then medical condition did not in itself provide a compelling reason for bail. He accepted that the appellant's health and family ties reduced the risk of absconding but

that "... Even the most stringent realistic bail conditions could not be close to being as effective as detention ..." and "that degree of risk to the national security, which his activities pose, should not be run". The Commission notes that these conclusions were reached before the events in May/June 2006 which led to the need to prohibit one particular visitor.

7. In the Commission's opinion the submissions of Mr Grieves, despite the care and force he has employed to produce them, are simply not well founded. They fail to demonstrate that the risk to national security which the appellant's activities could pose, if on bail at home, should be taken.
8. The earlier conduct on the part of the Secretary of State, labelled as concessionary, has no bearing on the present application. The earlier considerations were driven by the desirability of the appellant receiving proper medical care and by the obvious practical limitations which would arise if he was detained under conditions in a regulated institution. The present position presents the opposite. The best medical care will be provided to him in Belmarsh. The evidence before the Commission shows that the range and character of the care he would receive at home is completely uncertain. It is highly unlikely to involve 24 hour care.
9. The Security Service, whilst unable to make a definitive assessment, has nevertheless assessed the appellant to be a security risk if released on bail to his home.
10. His medical condition, as one would expect, varies. Like Ouseley J., the Commission is by no means satisfied that his condition would prevent him being a risk. Whilst it is the case that the risk stems from his communicating

with extremists, no sufficient conditions can be relied upon to reduce that risk to a level which would justify release on bail. At the heart of the application is the evidence of Mrs OO which constitutes an acceptance by her of the responsibility to act as “gaoler”, keep him under 24 hour watch, prevent him by telephone or computer from communicating with the outside world, save under controlled conditions, and barring the home to all visitors other than family.

11. The Commission regards the suggestion that the risk which he presents to national security should be placed on the shoulders of his wife as wrong in principle and wholly unrealistic. It is unimpressed by the suggestion that his influence “as a charismatic spiritual leader” (the allegation made by the Secretary of State) must have waned. The absence of a successor cuts both ways. The regard in which he is held could have prevented that occurring. Whilst the Commission has noted the absence of proscription of the JM, the point has little weight because the reasons why this has not occurred vary widely and are not always a sure indicator of a lack of risk.

12. The Commission considers that there is a real risk that, despite his wife’s belief to the contrary, the appellant will not accept her supreme control. If the allegations are correct, he misled her when he engaged in terrorist activity. Whilst he may respect her as a wife, that is not good reason to conclude he will respect her as a restraining force on his freedom. Indeed, the Commission’s experience has been that conditions amounting to house arrest can cause a breakdown in family relations. The arrangements suggested are far too precarious to enable the Commission to take the risk to national security which release on bail will involve.

13. We reject all the submissions advanced in support of this application. The appellant's memory loss and capacity to give instructions for his appeal will require evaluation but they did not, in the light of the uncertainty which surrounds them, justify the grant of bail.

14. For the above reasons, the Commission refused bail. The Commission heard evidence and submissions in a closed hearing. Nothing was disclosed which strengthened the case for the grant of bail or weakened the case against its grant. In the circumstances, no purpose will be served in delivering reasons based on the closed hearing. The Commission is satisfied that the issues raised in the open hearing definitively determine the question.