

JUDGMENT

SPECIAL IMMIGRATION APPEAL COMMISSION

Field House
Brems Buildings
London EC4 1WR

Friday, 16th December 2005

BEFORE:
THE HONOURABLE MR JUSTICE OUSELEY
(THE PRESIDENT)

IN THE MATTER OF APPLICATIONS FOR BAIL
Re: SC/33,34,35,36,37,38,41/05

MR D FRIEDMAN instructed by Messrs Birnberg Peirce
MS S HARRISON instructed by Messrs Tyndallwoods appeared on behalf of the Applicants.
MR S WILKEN (instructed by Treasury Solicitor) appeared on behalf of the Respondent.
MR M SHAW QC (instructed by Treasury Solicitor) appeared on behalf of the Special Advocates.

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THE PRESIDENT:

1. The question in each of these cases is whether SIAC is satisfied that there is a real risk that any individual applicant would abscond if allowed bail and whether a real risk would be created to

national security if he were allowed bail, whether or not he absconded. The bail conditions in answering those questions are obviously important. We have also taken into account the stage which the Secretary of State's case has reached in relation to safety on return and the duration of likely detention before appeals are heard. We have also, so far as possible, taken some account of the potential impact of the House of Lord's decision recently in relation to torture.

2. We heard submissions on 5th December 2005, in brief, in a number of cases, about the significance of the stage reached and about what does or does not appear to be proposed for agreement with Algeria. The Secretary of State's evidence on safety on return is due by 24th February 2006 in the lead Algerian cases. We have ruled that we could not yet conclude that the Secretary of State has no reasonable prospect of being in a position lawfully to return Algerians, but the position now on the prospects of a concluded agreement and what it might contain would be relevant both to the expectation of any applicant that that return was a risk to be avoided by absconding and to the balance to be struck between liberty and the risk to security. If there were no return to Algeria, a control order, we assumed, would be likely for these applicants.
3. With that in mind, I turn to the individuals.

'Y'

4. Following his alleged arrival in the UK on a false passport in 2000 and following a successful appeal against the refusal of asylum, he was granted indefinite leave to remain in 2001. The Secretary of State at present says that he is subject to two sentences of life imprisonment and one of death passed in Algeria in his absence. These followed convictions in his absence for terrorist-related offences. His extradition is, apparently, sought. The precise timing of his departure from Algeria in relation to these offences and in relation to what he did before arriving in the UK may be a matter of dispute later. But he was acquitted in the poisons plot trial and never charged in relation to false document-related offences.
5. He was released from custody in April 2005, where he had been since January 2003. He was on bail for five months living in NASS accommodation. There was no evidence of a breach of the limited bail requirements then imposed. No control order was made in respect of him. He is not married. He has a fiancée who he met during the trial. He is 33 years old. There is medical evidence supporting the allegations of torture in Algeria. He suffers from low mood and a sense of helplessness.
6. We take the view that, whilst there is material that suggests that he could abscond were he minded to, it does not satisfy us that there is a real risk that he will do so, at least at this stage. He is rationally able to assess the significance of the fact that he can challenge both the national security case and the safety on return case if the Memorandum of Understanding is, indeed, concluded with Algeria. He is in a paradoxical position, which it is difficult to deal with other than on a case-by-case assessment, of being an individual who has very considerable reason to

fear return to Algeria, on the very basis of which he has a proper case to argue that he cannot be returned. If he were to abscond, there is a risk that he would engage in activities which would be a risk to national security, and indeed such a risk exists even if he were not to abscond. However, we consider that, for the period we are considering here and in the light of the history of his case, that that risk can adequately be controlled by appropriate conditions appropriately monitored.

7. We accept the Secretary of State's submissions that the sureties and address proposed are inappropriate, but, subject to finding an acceptable address and we would wish, in principle, for a surety in a significant though not necessarily equal sum, he is to be granted bail. I do not intend that the absence of a surety should preclude bail if it turns out to be unobtainable.

'X'

8. He arrived in the United Kingdom in 1995 on false French documents, having left Algeria for Italy, he says, in 1994. His asylum claim was refused, but he obtained exceptional leave to remain on medical and compassionate grounds, which was extended, and eventually he was granted indefinite leave to remain on 9th December 2002.
9. He got married in a registry office in February 2004 to an Algerian national, who arrived in the United Kingdom in 2004 and made a claim, not yet determined, to stay as the dependant of her brother. They have no children. He has lived for the last two years at the same local authority address. Medical reports suggest that he is obese or considerably overweight and has been for some time. There is some evidence of past acts of self-harm, though he is not at present on suicide watch. There are references to jinns or spirits entering his body and telling him to commit self-harm and making derogatory comments about him. He is vulnerable to stress and anxiety and very fearful of return to Algeria. It is assessed that he has had a psychiatric illness for ten years.
10. The national security case, in part, relates to his alleged involvement in the poisons plot, although the case against him was abandoned in October 2003. In part, it relates to other groups with whom he is allegedly involved and to the contacts that he has. Again, it would be unnecessary and ill-advised to express any particular views about that part of the national security case. But it is evident that, in so far as it relies on the poisons plot and evidence from Meguerba, there is cause for encouragement on his part that the Secretary of State's case will not be taken at face value.
11. It is possible that, even giving no real weight to the ties of marriage in this case to an Algerian citizen and recognising that he did not breach immigration bail, bail conditions might control the risk of absconding adequately. But it is less clear in this case that the risk is manageable because of a clear incentive to abscond in the longer term. He has no convictions in Algeria, but interest in him would arise from involvement in the poisons plot and other allegations made as part of the Secretary of State's case. Again, paradoxically, there is for that reason more reason for him to

fear return. His psychiatric illness and his jinns make his behaviour less predictable and this would be a marginal case for bail given the degree of risk of absconding.

12. However, what has decided us to refuse bail in this case is evidence which satisfies us that, absconding or no, there is a real risk that he would engage in activities directly contrary to national security and he would not adjust his behaviour in the light of any conditions. The basis for this conclusion lies in the closed material. We recognise that, if the appeal is successful, he would have to be dealt with by a control order, if one were sought, but the relative strength of detention as opposed to a control order in dealing with that risk, where detention is a lawful option as it is here, means that he should stay in custody.
13. There will be a short closed judgment.

'AA'

14. This applicant is an Algerian. He entered the UK on false documents from Algeria via Italy and has used a cousin's French passport three times to try to obtain residency in Spain. He re-entered the UK in that false name. He was arrested in connection with charges of possession of false documents for terrorist purposes in September 2002, but also in connection with the poisons plot. After a number of interviews the identity now asserted was accepted. He was acquitted of the conspiracy charges and most of the charges of possession of false passports in relation to which the terrorist-purpose aspect had already been dropped, but he pleaded guilty to two counts of possession of false passports. He was sentenced to 15 months' imprisonment, which led to his immediate release following the acquittals in April 2005. He was then subject to immigration detention while his outstanding asylum claim was determined. It was not suggested then that he posed a threat to national security. He was granted immigration bail on not very onerous terms.
15. He was re-arrested in September 2005 following the decision of the Secretary of State to make a deportation order based on the expectation of the conclusion of an appropriate Memorandum of Understanding so as to permit his return to Algeria. It is inappropriate to express any firm views on the strength of the national security case, but there are particular features about his behaviour in the early days, which Mr Mansfield QC is entitled to pray in aid in attenuation of the risk, though we also accept Mr Eadie's submission that we do not have, inevitably, the full picture yet.
16. We have also considered the helpful submissions of the Special Advocate in these matters.
17. There is evidence of long-term use of a false identity, contacts with the Algerian community and other matters, which show that, if he were minded to abscond from bail, he could do so and it could not, in reality, be prevented. He has no family ties either.
18. However, his past behaviour on immigration bail, albeit in different circumstances because there was no such active threat to deport as now exists, is of real weight in his case and we also take

account of the acceptable address that has been provided, living with a responsible and acceptable surety. We recognise the strengths of his fears but believe that his recognition of the process yet to be undertaken by SIAC in his case, his ability to challenge the national security and safety case, coupled with a desire for stability, mean that he is unlikely to abscond and the risk of absconding in his case can adequately be controlled by conditions and the sureties proffered. We also conclude that, on bail, the risk he poses to national security can adequately be controlled. In principle, he would be required to reside at ... and the two sureties that he has indicated would be required.

'Z'

19. 'Z' arrived in the UK in 1991. He became an overstayer after six months. He claimed asylum when arrested in 1997 on PTA charges. Those charges were withdrawn, but he pleaded guilty to six fraud charges. The PTA charges were dropped in circumstances where the prosecution could not give the requisite evidence. The defence of the charges was in part that the provision of the support materials at the heart of the case for the defence of Algerian communities was a form of self-defence rather than terrorism. The national security case alleges that he is a leading GIA member in the UK.
20. He was sentenced in March 2000 to three years' imprisonment on fraud charges which led to his release in February 2001. He had been on bail from March 1998 to March 2000, complying with his residence, curfew and reporting requirements. He breached bail through a fraud offence, seemingly dealt with in the Magistrates' Court, but this did not lead to the revocation of his bail.
21. When arrest under Part IV of the ATCSA was imminent in December 2001, he disappeared and went underground in hiding. The certificate was not served on him. He came to the notice of the Security Services some two years later. He had been living at the same address since early 2002 when he was arrested. He had been living since 2002 with his Algerian wife, whom he had married in 2002 in an Islamic ceremony to whom he had become betrothed some 15 years before. He now has two young children. Ms Peirce says that he was living openly. The evidence for that is very limited and manifestly incomplete and we are not willing to accept it in the brief and general form in which it was expressed. We accept the broad point that this was not absconding in breach of bail, although there would have been an obligation on him to keep in touch with the Home Office and notify them of his address and changes in it which he breached.
22. He has a national security case to answer and it is of some weight. If he is, indeed, a leading member of the GIA, it is not necessarily the case that his actions should be seen, even in the context of the Algerian conflict, as actions of self-defence. Conversely, as with others who would be seen as very hostile to the Algerian regime, he may rationally feel that his case on safety on return is sufficiently strengthened not to make absconding worthwhile. We acknowledge that he was on bail between March 1998 and March 2000.

23. But it is plain that he has the means and the contacts to go into hiding successfully and to stay there. A family might inhibit others from going into hiding or make it more awkward to do so, but we do not regard the family in this case as likely to be of much weight to him if he felt he needed to go into hiding again. He has an incentive to do so greater than when he was on bail before. His view of his ability to do so would be the key to his decision, in our view. We believe that there is at least a very real risk that he would see no reason at all to take a chance on removal and would see no reason to believe that he could not go underground again with his range of contacts and do exactly what he has done in the past with some success. We also believe that there is at least a very real risk that he would be unwilling to accept effective restrictions on his activities if he could avoid those restrictions by absconding. Whilst those risks might have to be accepted under the control order regime, it is not necessary to accept them now. Bail is refused.

'W'

24. 'W' is 34. He claims to have entered the UK illegally in 1999 and claimed asylum shortly thereafter. The asylum claim is still outstanding.
25. He was arrested in January 2003 in connection with the poisons plot and released into immigration detention in April 2005, when he was acquitted as part of the second group of defendants following the jury verdicts of not guilty on the first group. He was released on immigration bail in May 2005. He was arrested again in September 2005. No control order was made.
26. There is a national security case to answer. This applicant has already had experience of success in the poisons trial and would not be without cause for some optimism here, though his dealings with Bourgass may call for more explanation from him. As we have said before, the Secretary of State's safety on return evidence is incomplete and, when complete, there will be considerable scope for argument about its effectiveness in relation to some of his case, which is that he deserted from the Algerian Army in the middle of a fight with terrorists. His ability to make a rational assessment of that may be affected, however, by his psychiatric state, which involves delusional disorders. He has been on bail in the past. Although we accept that he has breached its terms through sleeping rough as opposed to sleeping in his accommodation, this is not typical absconding, as he maintained his life in the accommodation in which he was required to reside. His mental state seems to have affected his reaction to his accommodation at night. He has no real ties as such here but probably has no better roots elsewhere now. He could abscond but we believe that the risk that he will abscond can realistically be dealt with by conditions and they would also reduce to adequate and manageable levels such risks to national security as he poses if properly monitored.
27. He proffers two sureties, which we will take. We do not know if the address previously used is still available. There would be an advantage in one more remote from Finsbury Park Mosque.

'V'

28. It cannot be said that this man's identity is established with any reasonable certainty. He arrived in the UK in 1997 and claimed asylum as a Palestinian called ... He withdrew the claim and was removed to Italy.
29. He arrived in the UK again in 1999, having been returned from Eire on false French identity papers, claiming asylum as a Libyan. His claim was refused but he was granted ELR until 5th December 2002.
30. In January 2003 he was arrested in connection with the poisons plot and stayed in custody until released into immigration detention in April 2005, when he was acquitted as part of the second group of defendants. He was released on immigration bail in May 2005. He went through the asylum claim, trial process and application for immigration bail as a Libyan national called ... Shortly afterwards, he said in an attempt, apparently, to make a clear breast of his position, that he was someone called 'V', an Algerian. It is not accepted yet or denied by the Secretary of State that he is that man.
31. He was taken into detention again on 15th September 2005.
32. The notice of intention to make a deportation order covers both identities and both nationalities which will undoubtedly give rise to some issues as the case proceeds.
33. There is no allegation of a breach of bail terms even after the August arrests. We accept that he has always had an uncertain position in the UK, whoever he is. He has an outstanding asylum claim.
34. Again, without going into the details, it is plain that both sides have proper cases to put so far as risk or degree of risk to national security are concerned. 'V' can take some comfort, so far as the poison plot allegations are concerned from the acquittal, from the limited role asserted by the prosecution, at least so far as ... is concerned, and the absence of false document charges. The question of whether he did or did not provide a safe house for Bourgass and, if so, why is a live issue.
35. He has the second argument available on safety on return.
36. There is a helpful bail history but that is offset by the lengthy false identity, as it is now claimed to be, and we do not know the answer to that. All that is known is that he says, maybe truthfully, maybe not, that he had a false identity for five years.
37. He puts forward as a surety Mr Omar Butt, a dentist, who was introduced to the applicant by Hassam Butt, the proposed surety's brother, via a human rights organisation of which Hassam

Butt could not remember the name. Mr Omar Butt, the dentist, who we accept is a respectable and responsible person, wishes to help devout and practising Muslims in difficulty and did so often. He did not share the extremist views attributed to his brother, which the brother said he had now renounced. Mr Butt did not regard the use of false names, even in this way, as unusual for asylum seekers. We accept that, whatever identity is correct, he has not breached the bail terms required of him in immigration bail.

38. Like many other applicants, he has access to funds, false documents and contacts and could, if he wished, abscond and no conditions could prevent it for sure. It would be a marginal decision on bail in view of the surety, to be set against the very considerable doubts over what the applicant would do in the light of his lengthy history of deceit, still, as we see it, unresolved. His identity goes to the country of return and, as we have said, the notice of intention to deport covers both countries and goes to the risks faced and how he appraises them.
39. However, there are activities in the closed material, which are important in understanding this applicant and the significance of any continuing risk, which we are satisfied cannot readily be controlled by bail conditions. These factors taken together persuade us that this is not a case for bail. Were his identity properly to be established, that would remove a significant variable and the application could be reconsidered.

'CC'

40. He is a 46-year old Libyan who left Libya in 1998. He married in Jordan and arrived in the UK in September 2002 with his wife and one child, where he claimed asylum.
41. Following refusal and appeal, he was granted asylum in September 2003 and a year later ILR as a refugee.
42. The Secretary of State had rejected on credibility grounds his claim to be at risk in Libya for Islamist activities.
43. There was a period of six months during which his appeal had initially been rejected by the adjudicator before it were ordered to be re-determined by the IAT, in which his position can properly be regarded as having been more precarious.
44. His wife, who is not a Libyan, may be stateless, but he now has three children, one of whom is a British citizen and one of whom is entitled to be registered as such.
45. He was arrested in October 2005, as the result of a making of a notice of detention to deport. A Memorandum of Understanding was concluded between Libya and the UK on 18th October 2005. The Libyan Islamic Fighting Group of which the Secretary of State says the applicant is a prominent member was proscribed on 14th October 2005.

46. This applicant has never been subject to Part IV control nor to a control order. Throughout his period in the UK, he complied fully with all the requirements of temporary admission, punctiliously notifying the Secretary of State of changes of address on each of many occasions, not going to ground at any stage, including when his first appeal was dismissed.
47. Apart from the documents upon which he arrived, he and his wife have not used in the UK any false documents or names.
48. The Secretary of State is entitled to point to the fact of the Memorandum of Understanding as capable of giving rise to real fear that the applicant will be returned to Libya and that that is a significant change. The applicant explains his attitude towards the UK, his belief in its system of justice and the damage to his credibility and that of the opposition to Gadaffi were he to abscond, and he does so in the light of the support that he says he has here.
49. We accept that for those and other reasons, including family ties in this instance, a rational appraisal of his prospects on Article 3 and Article 8 grounds, that, subject to suitable conditions, the real risk that he would abscond can adequately be obviated.

What has been of greater concern in this case is whether there is a risk to national security on the basis that he does not abscond. The question is whether conditions can adequately control this and whether, while detention is lawful as it is, it is best that it be controlled by detention. We have not found this straightforward and the basis of our concerns is to be found largely in the closed material. But we have in the end concluded that bail should be granted, but it is being granted on stricter terms than would be necessary simply to prevent absconding. The surety proffered will be necessary.

REVIEW OF DECISIONS MADE ON 20TH OCTOBER 2005

50. I propose to deal next with the review that I said that I would undertake in relation to those who were dealt with on 20th October 2005.
51. I said on 5th December I would reconsider the decisions which we had reached, in the light of the potential impact of the state of negotiations between Algeria and the UK, on the risks of absconding, in particular, and the balance between detention and those risks if the hearings in those cases were not to be dealt with before mid-June.
52. I point out that, if the lead Algerian cases reject the Secretary of State's case, it follows that the other Algerian cases will be dealt with rapidly and will be resolved shortly after. If, on the other hand, the Secretary of State's case is accepted in the lead Algerian cases, strength would have been gained by the Secretary of State's case over that interim period, which would increase the absconding incentive.

53. We have also considered the possible impact of the recent House of Lords' decision on cases where we regard it as potentially relevant.

'P'

54. We believe that he would continue to be motivated by quite a high level of subjective fear of return to Algeria, which might well not be greatly assuaged by what he might properly be advised about the implications for him of the current state of negotiations between Algeria and the UK. He represents an abscond risk on bail. His activities on bail, even if tightly controlled, could run a degree of risk to national security. However, he has mental problems, which in the past have led to his being detained in Broadmoor. His use or absence of use of prosthetics for his hands is an inhibitor to some degree of absconding, as would be the receipt of medical treatment. We have, however, come to the view that the uncertainty should tell in his favour largely because of the particular and overall medical circumstances in his case and the treatment needs which would act in some degree as an inhibitor. Accordingly, once a suitable address has been found and arrangements for his care by qualified medical staff been made, he will be released on bail on very strict terms.

'K'

55. He continues to represent a high abscond risk and it is our view that the state of negotiations with Algeria would not affect that at all.

'I'

56. We remain of the same view, that his abscond risk is not significantly reduced nor his risk to national security by the state of negotiations.

'Q'

57. Likewise 'Q'. We remain wholly unpersuaded that he would not abscond.

'H','G','A'

58. So far as 'H' and 'A' are concerned, there will be adjustments to the bail terms to reflect two matters. First of all, though it is a matter of detail, there are the matters most recently raised in relation to GPs by Birnberg Peirce. There will be a variation to the hours to which they are allowed out. There will be adjustments to reflect the visits to the GP.

59. In relation to 'H', 'G' and 'A', there will be some lifting of the restrictions. That is to say, in 'H's case, he will be allowed out for four hours within the same area; 'G', in addition to the

adjustments that have already been made, will be allowed out, in any event, between 12 and two - it is the two hours rather than the particular period - and 'A' will be able to leave his house between 12 and two or any other period of that which the applicant may prefer in the hours of daylight within a particular area, but in his case there will be a proviso, because of the degree of the abscond risk that we consider he represents, that he will have to be accompanied at all times by his wife or at least one of his children.

60. Those are our conclusions in relation to those matters. There are inevitably some tidying up and ancillary matters to be dealt with. I think that it is probably best to deal with those now before dealing with the two short closed judgments, which I have.