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Ref: HUM12540

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 24/41081

Delivered: 03/05/2024

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

IN THE MATTER OF AN APPLICATION BY MOHAMMED ALI
FOR A WRIT OF HABEAS CORPUS

Adrian Higgins (instructed by O'Neill Solicitors) for the Applicant
Chris Summers (instructed by the Departmental Solicitor's Office) for the Respondent

Ex Tempore

HUMPHREYS J

Introduction

[1] This is an application for a writ of habeas corpus which is made ex parte but in line with the modern approach, both the Home Office and the Northern Ireland Prison Service were put on notice of the application and in the case of the Prison Service they have helpfully appeared today. Whenever an application such as this is made, the court has four options (see Order 54 of the Rules of the Court of Judicature (Northern Ireland) 1980:

- (i) To order the immediate release of the person detained;
- (ii) To issue an originating motion to have an inter partes hearing;
- (iii) To direct the issue of the writ against the party holding; and
- (iv) To dismiss the application.

[2] It is necessary at this stage for the applicant to show reasonable grounds, both to show that he has been detained and that the detention is unlawful.

The applicant's detention

[3] In this case the applicant was arrested and remanded in custody on 18 December 2023. He applied to the High Court and was granted bail on 5 January 2024 but was not able to perfect that bail until 22 February 2024, and on that date, he was released from custody in respect of the criminal offences. However, he was immediately detained on foot of an IS91 form issued by the Home Office which relates to detention for the purposes of immigration deportation. He then applied for and was granted immigration bail on 26 March 2024. The applicant was sentenced to a period of six months' imprisonment by the District Judge on 22 April 2024 in respect of those offences for which he was originally arrested.

[4] In terms of the dispute, this centres on his proper release date. The respondent, the Northern Ireland Prison Service, has carried out a calculation whereby they say his proper release date is 12 May, whereas the case being made by the applicant is that he ought to have been released on 22 April, the day on which he was sentenced by the magistrates' court.

[5] The period in dispute, therefore, between the parties relates to the period during which he was held, having perfected his High Court bail, that is 22 February until 26 March when he was in custody on foot of the IS91. It is argued that that should be taken into account in the determination of the applicant's proper release date from custody.

The statutory provision

[6] This issue is governed by section 26 of the Treatment of Offenders Act (Northern Ireland) 1968. Section 26(2) states:

“The length of any sentence of imprisonment...imposed on or ordered in relation to an offender by a court shall be treated as reduced by any relevant period...”

[7] Section 26(2A) defines “relevant period” as:

- “(b) any period during which he was in custody -
 - (i) By reason only of having been committed to custody by an order of a court made in connection with any proceedings relating to that sentence or the offence for which it was passed or any proceedings from which those proceedings arose; or

- (ii) By reason of having been so committed and having been concurrently detained otherwise than by an order of the court.”

Consideration

[8] In this case, section 26(2A)(b)(i) covers a period of being committed to custody by order of a court made in connection with any proceedings relating to that sentence. This clearly and indisputably captures the period from 18 December 2023 until 22 February 2024 when the applicant was in custody on foot of the court order in relation to the criminal offences.

[9] The applicant seeks to avail of section 26(2A)(b)(ii) and says that being held on immigration detention falls within that definition. However, what is required by section 26(2A)(b)(ii) is that there be both committal to custody by an order of a court made in connection with any proceedings relating to that sentence and having been concurrently detained otherwise. So whilst he was “detained otherwise” on foot of the IS91 from 22 February until 26 March, the applicant was not so committed within the meaning of section 26(2A)(b)(ii) since he was no longer committed to custody by an order of a court made in connection with any proceedings. If it were not for the IS91 detention he would have been released. It is evident, therefore, that the assertion made by the Northern Ireland Prison Service is clearly correct that the period of detention from 26 February to 26 March does not fall within the definition of relevant period and is, therefore, not taken into account in the calculation of the proper release date. The application for habeas corpus must fail.

[10] I am told today that there is a second IS91 which has been issued now that the applicant is a sentenced prisoner and that even if he were to be released today or at any time, he will still be liable to be detained on foot of that fresh IS91. That is not a matter that really troubles this court, it is obviously a practical issue for the applicant had his advisers to take into account, but it does not impact upon the proper interpretation of the applicant’s release date which is, as I have confirmed, in line with the calculation carried out by the Prison Service.

[11] Therefore, I dismiss the application for the writ of habeas corpus. Given that this is an ex parte application, I will follow my usual course and not make any order as to the costs of the application.