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Judgment: approved by the Court for handing down | *Delivered:* **03/08/12**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

IN THE MATTER OF PIOTR STROJWAS AN APPLICANT FOR BAIL

McCLOSKEY J

[1] Piotr Strojwas, hereinafter described as "*the Applicant*", applies for bail, pursuant to a written Notice of Application received by the High Court on 27th July 2012. The application contained the following material recital:

> "***TAKE NOTICE THAT*** *Piotr Strojwas was ordered to be committed to/at present detained in HMP Maghaberry* [sic] *hereby applies to the High Court for an order that he be released from custody pending his extradition hearing or while on remand upon such terms and conditions as the court may think just*".

The application continues:

> "*Bail application refused at Belfast Crown Court, Laganside on 8th June 2012*".

The only other information which can be gleaned from this application and an earlier abandoned application for bail is that the Applicant is a male person aged thirty-one years who was originally committed to custody having been charged with the offences of aggravated burglary with intent to commit GBH, disorderly behaviour and assault on police. This committal to custody evidently occurred at Dungannon Magistrates' Court on 16th December 2011. The Applicant is a Polish national, aged thirty-one years.

The remaining contents of the Notice are of a formal and perfunctory nature. The Notice is, regrettably, manifestly deficient, lacking in all kinds of obviously material background information.

[2] Upon receipt of his Notice, the court directed that the Applicant's solicitors specify the statutory provision, if any, upon which they were relying in pursuit of the application. This having failed to elicit any response I proceeded to list the application for hearing, notwithstanding my reservations that it was misconceived.

[3] In order to rectify the significant deficiencies and omissions in the application, it was necessary for the court to commission relevant information and documents from certain sources, namely, Northern Ireland Courts and Tribunals Service and the Crown Solicitor's Office, which is involved in the extradition proceedings against the Applicant (*infra*). Fortunately, this proved a productive exercise and, in consequence, the court was able to perform its function on a properly informed basis.

[4] The substantial quantity of additional information now available to the court uncovers the following material history:

(i) On 15th November 2011, the Applicant was charged with the offence of burglary with intent to inflict grievous bodily harm.

(ii) On 21st December 2011, an application to the High Court for bail was listed initially. This was withdrawn subsequently, on 23rd January 2012.

(iii) There are separate extradition proceedings against the Applicant. These are based on a European Arrest Warrant ("*EAW*"), issued in Poland, the requesting State, on 19th May 2010. They relate to a total of eight alleged offences, giving rise to the sentencing of the Applicant in Poland on various dates and by various courts in 2007 and 2008. Pursuant thereto, it would appear that the Applicant has received custodial sentences of in excess of ten years' duration.

(iv) His extradition is, therefore, sought for the purpose of sentence execution.

(v) On 22nd November 2011, the designated judge in Northern Ireland dealt with the Applicant for the first time in respect of the extradition application, adjourning the hearing and remanding him in custody.

(vi) This exercise was repeated on four subsequent dates – 9th December 2011, 25th May, 8th June and 22nd June 2012.

(vii) As a result of the most recent order, the Applicant remains in custody and the extradition proceedings have been adjourned to 7th September 2012 at Laganside Courthouse, Belfast.

(viii) The Applicant has acquired a criminal record in Northern Ireland, having been convicted of common assault and theft (twice) in February and September 2009.

At the hearing conducted on 3rd August 2012, Mr. Fee, counsel for the Applicant, informed the court that between November 2011 and May 2012 the extradition proceedings against the Applicant had been adjourned on successive occasions for two main reasons. The first was to await the outcome of his prosecution in this jurisdiction. The second was to commission a psychiatric report. As regards the first of these issues, the Applicant was prosecuted summarily and, in May 2012, received a custodial sentence which had no practical impact, as he was by then time served.

[5] The court has also ascertained from its own inquiries that in the history of the extradition proceedings summarised above the Applicant has applied for bail on one occasion only, 8th June 2012, unsuccessfully. This appears to have been the last material event preceding the lodging of the present application for bail to the High Court. Mr. Fee confirmed the correctness of this analysis. He also provided this court with a report of Dr. Best, consultant psychiatrist, dated 12th July 2012 and a letter dated 7th June 2012 from the organisation known as "*STEP*" (an acronym for South Tyrone Empowerment Programme).

[6] The grant of bail in extradition proceedings is regulated by statute. The relevant statutory provisions were considered by the Divisional Court in ***De Juana Chaos –v- Spain*** [2010] NIQB 68 and are rehearsed in the following passages:

> *"[6] Pursuant to Section 67 of the 2003 Act, the Recorder of Belfast is 'the appropriate judge' for the purposes of the statute. The statutory scheme envisages that there will be an initial hearing before the appropriate judge, followed by a possible interim hearing or hearings, culminating in the substantive hearing. Where the requested person is arrested pursuant to the relevant warrant, he or she must be brought before the appropriate judge within a period of forty-eight hours: see Section 4(2) and (3). The statute prescribes an initial hearing, at this stage and the topic of bail is specifically addressed in Section 7:*
>
> > *'(9) If the judge exercises his power to adjourn the proceedings he must remand the person in custody or on bail.*

> *(10) If the person is remanded in custody, the appropriate judge may later grant bail'.*
>
> *Section 9 contemplates the possibility of an adjournment of the extradition hearing and, in this context, addresses the question of bail in these terms:*
>
> > *'(4) If the judge adjourns the extradition hearing he must remand the person in custody or on bail.*
> >
> > *(5) If the person is remanded in custody, the appropriate judge may later grant bail'.*
>
> *[7] Section 21 of the 2003 Act addresses the topic of bail again, in the context of the court making an extradition order at first instance. Per Section 21(4):*
>
> > *'If the judge makes an order under subsection (3) he must remand the person in custody or on bail to wait for his extradition to the Category 1 territory'."*

Consistent with Section 7(10) and Section 9(5), there are powers both to grant bail and to subsequently reconsider any refusal of bail at this stage of the process:

> *"Section 21(5) continues:*
>
> > *'If the person is remanded in custody, the appropriate judge may later grant bail'.*
>
> *Notably, the appropriate judge's statutory power to grant bail at the conclusion of the proceedings is linked directly to the making of an extradition order. This power is clearly designed to give effect to the extradition order."*

Sections 26 and 27 of the 2003 Act are concerned with appeals to the High Court and are silent on the issue of bail. Section 30(2), however, provides that where an appeal is pursued:

> *"The judge must remand the person in custody or on bail while the appeal is pending …*
>
> *If the judge remands the person in custody he may later grant bail".*

Thus, in cases where the requesting State is the Appellant, the bail jurisdiction exercisable by the court remains vested in the designated judge until the occurrence of the relevant final event, which, conceivably, may not materialise until some considerable time after the decision of the High Court on appeal. A striking feature of the provisions of Section 28 is that, as regards bail, jurisdiction remains vested in the Recorder throughout the period when the appeal is pending and at least until determination of the appeal.

[7] Thus there is a notable recurring theme throughout the 2003 Act. The statute makes explicit provision for the grant of bail by the designated judge at all stages of the process *and the reconsideration by the same judge of refusals to grant bail*: see Section 7(9) and (10); Section 9(4) and (5); and Section 30(2) and (3). The intention and effect of these provisions seem to me obvious. They invest the designated judge with power to grant bail and to reconsider refusals of bail at all stages of the extradition process preceding determination of any appeal to the High Court. The omnipotence of the designated judge in bail decisions and the reconsideration thereof throughout the extradition process is reinforced by Section 28, analysed above.

[8] I am of the view that the Applicant's circumstances are clearly embraced by the relevant provisions of Section 7 and/or Section 9, rehearsed in paragraph [5] above. He is a person who is the subject of a formal surrender request by the State of Poland via the appropriate mechanism viz. a European Arrest Warrant. These proceedings are being conducted before a judge duly designated under Section 67 of that 2003 Act. The Applicant, in the course of the extradition proceedings, has been refused bail by one of the designated judges. The designated judge has adjourned the extradition hearing and will next consider the matter on 7th September 2012. This court was informed that, on this forthcoming occasion, a substantive hearing date will be set. I consider it patent that the judge retains jurisdiction to grant the Applicant bail, by virtue of Section 7(9) and (10) and Section 9(4) and (5).

[9] I further consider that in circumstances where statute has expressly conferred on another court powers to grant, refuse and reconsider bail, the invocation of the inherent jurisdiction of the High Court will normally be inappropriate. While it is difficult to conceive of a case in which such jurisdiction may properly be invoked, further observation and analysis in the context of the present application would be pure *obiter dictum*. I draw attention to what was said by this court regarding the inherent jurisdiction of the High Court in bail matters in ***In the Matter of an Application by BG*** [2012] NIQB 13:

> *"**[7]** The jurisdiction of the High Court in bail matters is fundamentally inherent in nature. It is statutory only where the newly introduced device of prosecution appeals is concerned: see Section 10 of the Justice (Northern Ireland) Act 2004. In such cases, no*

further appeal is possible. The inherent jurisdiction of the High Court is conveniently summarised in the Northern Ireland Law Commission's Consultation Paper "Bail in Criminal Proceedings" paragraph 3.25:

> *'The jurisdiction of the High Court to grant bail falls within the inherent jurisdiction of the Court and the procedures to be followed are found in Order 79 of the Rules of the Court of Judicature (NI) 1980. The High Court does not act as an appellate court in relation to refusals of bail, but …… persons who are refused bail by the Magistrates' Court or the Crown Court can apply for bail afresh in the High Court, although the High Court will normally refuse to entertain an application which should properly be brought to the Crown Court. The jurisdiction of the High Court to grant bail ceases once a person has been sentenced.'*

In ***Chaos –v- Kingdom of Spain*** *[2010] NIQB 68, the Northern Ireland Divisional Court considered certain aspects of the jurisdiction of the High Court in bail matters. The court noted that the inherent power of the High Court to grant bail had arisen for consideration in* ***R –v- Home Secretary, ex parte Sezek*** *[2002] 1 WLR 348. The context was that of an application for judicial review, overlaid by the exercise of the detention powers conferred on the Secretary of State by the Immigration Act 1971. The Court of Appeal had to confront the question of whether the High Court had any inherent jurisdiction to grant bail, in circumstances where Parliament had specifically empowered the Secretary of State to detain the subject. Delivering the judgment of the Court of Appeal, Peter Gibson LJ stated:*

> *'16. We own to having some doubts as to whether there is room for an inherent jurisdiction to grant bail in relation to a civil appeal in judicial review proceedings when Parliament has given the Secretary of State the power to detain and the substance of the complaint is the exercise of that power. But in the light of the authorities we accept that the High Court has the power in judicial review proceedings to make ancillary orders temporarily releasing an applicant from detention and that on an*

> *appeal in those proceedings this court by virtue of section 15(3) of the 1981 Act can make the like order. In our judgment this court is exercising an original jurisdiction and it is not judicially reviewing the decision by the Secretary of State.'*
>
> *The ability of the High Court to exercise inherent jurisdiction in a variety of respects and contexts is not confined to bail matters: see* ***Ewing v Times Newspapers*** *[2010] NIQB 65, paragraph [11]. Moreover, this capacity is not shared by courts of inferior jurisdiction. Thus, in determining issues relating to bail, neither the Magistrates' Court nor the Crown Court may have resort to any inherent powers: the jurisdiction of each of these tribunals is purely statutory in nature."*

The court's analysis of the inherent jurisdiction of the High Court to grant bail continued in these terms:

> *"**[8]** The origins of the inherent jurisdiction of the High Court to grant bail are traceable to its common law power to review the legality of the detention of the citizen through the medium of habeas corpus proceedings. In Criminal Procedure in Northern Ireland (Valentine and Hart) it is stated, at paragraph 5.04:*
>
> > *'The High Court has inherited the original and inherent jurisdiction of the Court of Queen's Bench to hear an application for bail, which should only be invoked if the Magistrates' Court has refused bail …'*
>
> *The origins and antecedents of bail serve to expose its essential character. It is suggested in the 1948 edition of Archbold Criminal Pleadings that the High Court exercises the bail powers of the former Court of King's Bench. These were common law powers. Originally, they were exercised by a Writ of habeas corpus. This practice evolved and, according to the text:*
>
> > *'An application for bail in felony or misdemeanor where the party is in custody shall be in the first instance by summons before a judge at chambers for a Writ of habeas corpus, or to show cause why the Defendant should not be admitted to bail either before the judge at chambers or before*

a justice of the peace, in such an amounts as the judge may direct'.

As appears from the following passage, the application for a Writ of habeas corpus was overtaken by the simpler mechanism of applying by summons to a judge in chambers to show cause why the prisoner should not be admitted to bail before a justice of the peace. In this way, the order of the High Court, made in the exercise of its inherent jurisdiction, became a pre-requisite to the admission to bail of the prisoner by a justice of the peace. This inherent jurisdiction is properly viewed as an aspect of the traditional supervisory powers of the High Court."

The correct analysis, in my view, is that in matters of bail recourse to the inherent jurisdiction of the High Court should be a measure of last resort. This step is plainly unnecessary in circumstances where another court possesses jurisdiction to grant bail to the person concerned.

[10] Self-evidently, it is unnecessary to invoke the inherent jurisdiction of the High Court to review the legality of the detention of the citizen in circumstances where statute has made express provision for another court having jurisdiction to do so. This may also be viewed as a reflection of another well recognised principle, which is to the effect that resort to the inherent jurisdiction of the High Court is generally inappropriate where the relevant "field" is occupied by statutory intervention, whether in the form of primary or secondary legislation, including Rules of Court. Furthermore, I am satisfied that this approach is harmonious with Article 5 ECHR, since detention pending extradition is one of the authorised grounds of detention and the series of provisions in the 2003 Act highlighted above provide ample mechanisms for applying to the court to secure the liberty of the individual by the grant of bail. In this respect, I refer to, but do not repeat, ***Re BG*** (*supra*), paragraphs [13] and [17].

[11] At the hearing held on 3rd August 2012 I conducted some limited examination of the Applicant's spouse, from whom some further material information was elicited. As recorded above, I also received Dr. Best's report and the "STEP" letter. These materials, including evidence from Mrs. Strojwas, will, predictably, be deployed at the substantive extradition hearing in the autumn. They will also feature in such renewed application for bail as the Applicant may see fit to pursue in the appropriate forum.

[12] For the reasons expressed above I consider this application misconceived and dismiss it accordingly.