

MOHAMMED v SECRETARY OF STATE FOR THE HOME DEPARTMENT

QUEEN'S BENCH DIVISION (ADMINISTRATIVE COURT)

Fordham J: 31 March 2020

[2020] EWHC 1337 (Admin); [2020] A.C.D. 71

Ⓒ Delay; Detention pending deportation; Interim relief; Lawfulness of detention; Mental health; Release

- H1 *Court ordering claimant's release from immigration detention pending removal from country—despite claimant being high risk in terms of absconding, reoffending and harm, strong claim that detention in breach of third Hardial Singh principle—evidence that claimant suffering from significant mental health disorders reinforcing case—continued detention contrary to secretary of state's own policy guidance*

Introduction

- H2 The claimant applied for interim relief in the form of release from immigration detention.

Facts

- H3 The claimant had been in immigration detention since May 2019, awaiting the secretary of state's deportation decision. In January 2020, an evaluation by a senior authorising officer recommended release, but was not actioned. In March 2020, a continued detention period of 28 days was authorised pending the preparation of a plan to allow effective management of the claimant in the community. That period was due to expire imminently at the date of the instant hearing.

Held: Application granted.

- H4 **Appropriateness of considering legal merits of claim**—The strength of the legal claim was capable of being relevant to the consideration of the balance of convenience. There were particular reasons in the instant case why it was appropriate to evaluate the legal merits of the claim, although that was not to suggest that it would be necessary or appropriate to do so as a general principle applicable in other cases. Firstly, the interim relief stage was likely to be dispositive of the issue: there would be no substantive hearing following which the claimant could be re-detained if his claim failed. As a matter of principle, where a claim for interim relief was likely to be dispositive of the substantive issue, that could be a reason to look at the legal merits. Secondly, while the substantive law had woven into it competing public interest considerations which courts would wish to consider in

a balance of convenience evaluation, it was helpful to recognise that the law had those features in mind when the relevant principles were articulated and applied. Thirdly, the court was well prepared to look at the *prima facie* nature of the claim thanks to the parties' preparation of the case: the court had the benefit of written and oral submissions from both parties, a wealth of material filed by them, and had read materials prior to conducting the hearing.

- H5 **Breach of Hardial Singh principle**—A detention review had assessed the claimant to be high risk in terms of absconding, reoffending and harm. Those were serious and legitimate relevant concerns in the context of the third Hardial Singh principle, according to which the secretary of state should not seek to exercise the power of detention if, before the end of the period during which it was reasonable in all the circumstances for the deportee to be detained, it became apparent that the secretary of state would not be able to effect deportation within that period. In evaluating whether that principle was being complied with, the court had considered contemporaneous documents disclosed by the secretary of state. They showed that the recommendation at the date of the instant hearing remained as it had been in January 2020: release. The release had not been actioned because the recommendation needed to be considered. Because the application was for interim relief, the court was not deciding the substantive merits of the case; however, as things stood, and on the basis of the materials which a court would have for a substantive evaluation, there was a strong claim on the face of it that detention was in breach of the third Hardial Singh principle, *R. v Governor of Durham Prison Ex p. Singh* [1984] 1 W.L.R. 704 and *R. (on the application of Lumba) v Secretary of State for the Home Department* [2011] UKSC 12; [2012] 1 A.C. 245 followed.
- H6 **Mental health**—Medical evidence reinforced the strength of the claim and why the balance of convenience and the public interest was in favour of the grant of interim relief. The evidence was that the claimant fulfilled the diagnostic criteria for severe depression and post-traumatic stress disorder, and that both those significant mental health conditions were causally linked to the immigration detention. According to the medical evidence, he had not been suffering from mental health disorders prior to detention and on the balance of probability the detention had materially contributed to their development. Further, under the secretary of state's own policy guidance, *Adults at Risk in Immigration Detention*, the evidence suggested that the claimant was a "level three" case, described as a case where "on the basis of professional and/or official documentary evidence detention is likely to lead to a risk of harm to the individual if detained for the period identified as necessary to effect removal". It would be difficult for the secretary of state to sustain the assessment that the claimant presented as a "significant public protection concern" or "current public protection concern", which were two of the conditions in the policy for detention in level three cases.
- H7 **Appropriate order**—The court granted interim relief on the balance of convenience, directing that the claimant should be released to an address whose suitability had been confirmed by the secretary of state. The secretary of state would impose appropriate bail conditions within 21 days.

H8 **Cases considered**

Belize Alliance of Conservation Non-Governmental Organisations v Department of the Environment (Interim Injunction) [2003] UKPC 63; [2003] 1 W.L.R. 2839; [2004] Env. L.R. 16

R. (on the application of Adams) v Secretary of State for the Home Department
[2014] EWHC 3506 (Admin)

R. (on the application of Lumba) v Secretary of State for the Home Department
[2011] UKSC 12; [2012] 1 A.C. 245; [2011] 2 W.L.R. 671

R. v Governor of Durham Prison Ex p. Singh [1984] 1 W.L.R. 704; [1983] Imm.
A.R. 198; (1984) 128 S.J. 349 QBD

H9 *Alex Goodman* (instructed by Leigh Day & Co) for the claimant.
Emma Dring (instructed by the GLS) for the defendant.

Al Brunker