

CANADA / JUDGMENT

Thailand v. Saxena

2006 BCCA 147

COURT

British Columbia Court of Appeal

DECIDED

22 March 2006

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2006 BCCA 147 Thailand v. Saxena COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Thailand v. Saxena, 2006 BCCA 147 Date: 20060322 Docket: CA027749 IN THE MATTER OF THE EXTRADITION ACT, R.S.C. 1985, c. E-21 Between: The Attorney General of Canada on behalf of The Kingdom of Thailand Respondent (Requesting State and Applicant) And Rakesh Saxena Appellant (Fugitive and Respondent) Docket: CA031462 Between: Rakesh Saxena Applicant And Minister of Justice and Attorney General of Canada Respondent BAIL REVIEW UNDER SECTION 680(1) OF THE CRIMINAL CODE Before: The Honourable Chief Justice Finch (In Chambers) Written Submission of the Applicant: March 8, 2006 Written Submission of the Respondent: March 17, 2006 Place and Date of Judgment: Vancouver, British Columbia March 22, 2006 Reasons for Judgment of the Honourable Chief Justice Finch:

- [1] Mr. Saxena applies under Section 680(1) of the Criminal Code, R.S.C. 1985, c. C-46 for a direction that a division of the court review the order made in Court of Appeal chambers on 6 March 2006 refusing him bail pending his application for leave to appeal to the Supreme Court of Canada. The Attorney General of Canada opposes the application on two bases. First, it says that s. 680 does not confer jurisdiction for review in extradition proceedings, because the section is not incorporated by reference into the Extradition Act, R.S.C. 1999, c. 18. Second, the Attorney General says that the order refusing bail is amply supported by the evidence, and there is no reasonable prospect of success on review.
- [2] The jurisdictional issue has not previously been squarely confronted in this Court. Orders where the Chief Justice of British Columbia has purported to exercise a discretion under s. 680 in extradition proceedings were made in *Seifert v. Italy* (2003), 200 B.C.A.C. 1, 2003 BCCA 606, and in *United States of America v. Reumayr*, [2005] B.C.J. No. 40 (Q.L.), 2005 BCCA 27.
- [3] However, in *Maydak v. Canada (Attorney General)* (2004), 185 C.C.C. (3d) 559, 2004 BCCA 164, a judge in chambers made comments which appear to support the position taken by the Attorney General.

- [4] In *De Arrilucea v. Canada (Minister of Justice)* (2005), 197 C.C.C. (3d) 209, 2005 QCCA 94, the Chief Justice of Quebec held that s. 680 is incorporated by reference into the Extradition Act: See also *États-Unis d'Amérique v. Chityal* (2004), 191 C.C.C. (3d) 442 (C.A.); *États-Unis d'Amérique v. Divito* (2004), 194 C.C.C. (3d) 148 (C.A.).
- [5] In Ontario the issue has been considered, but not decided, in *United States of America v. Dalglish*, (14 March 2006), Toronto Nos. C43493 and C44475, an endorsement decision of the Ontario Court of Appeal.
- [6] Although I have previously made orders under s. 680 in extradition proceedings, the jurisdictional issue has not previously been raised. In my view based on the authorities, it is an open question, and one which should be resolved by a division of the court. The question is whether this is an appropriate case for that purpose.
- [7] Assuming that s. 680 confers jurisdiction to direct a review of an order refusing bail in extradition proceedings, the question is whether there is any reasonable prospect of success on review, or whether the court applying the law could possibly conclude that the application for release should have been allowed. The threshold for granting leave under s. 680 is low: *R. v. Williams*, [2004] B.C.J. No. 2307 (Q.L.), 2004 BCCA 566; *R. v. Gill*, [2001] B.C.J. No. 1993 (Q.L.), 2001 BCCA 569; and *R. v. Kim*, [2002] B.C.J. No. 327 (Q.L.), 2002 BCCA 120.
- [8] Here, the Attorney General accepts that Mr. Saxena's proposed grounds of appeal to the Supreme Court of Canada are not frivolous. The chambers judge refused bail because the applicant failed to satisfy her that he would surrender himself into custody, or that his detention was not necessary in the public interest. Whether adequate terms could be imposed on a bail order to address those considerations is in issue. The evidence shows that the applicant was released pending the hearing of his appeal in this court for over seven and one-half years. On the other hand, there is evidence to indicate that there is a risk of flight.
- [9] In my view this is a case that meets the low threshold for review, and will provide the court an opportunity to decide the jurisdictional issue raised by the Attorney General.
- [10] I direct that a division of the court review the order refusing bail made on 6 March 2006.
"The Honourable Chief Justice Finch"

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