

**In the Crown Court at Southwark**

**R v Kuntal Patel**

**Sentencing Remarks by Mr Justice Singh**

**7 November 2014**

[The defendant may remain seated for the time being.]

**Introduction**

1. On 2 October 2014 you were convicted by the jury, on count 1 of the indictment, of acquiring a biological toxin, namely Abrin, contrary to section 1 of the Biological Weapons Act 1974. The offence occurred in the early part of December 2013.
2. You had previously pleaded guilty, on count 2, to attempting to obtain Abrin in relation to the same event. It is common ground before me that that offence is subsumed within the substantive offence of which you have now been convicted by the jury. Accordingly, I direct that count 2 should lie on the file.
3. On 15 September 2014, a week before the scheduled start of your trial, you changed your plea on count 4 and also pleaded guilty to a second offence of attempting to obtain Abrin in late December 2013 and January 2014.

**Factual background**

4. In the autumn of 2013 you made contact with a dealer in the USA called Jesse Korff, who was operating on an illicit website called Black Market Reloaded. He was known on the website as Snowman and was prepared to sell highly dangerous toxins such as Ricin. In order to proceed with your purchase of Abrin you had to create a bitcoin account to pay Jesse Korff approximately

£950. You also had to create encrypted accounts in order to communicate with him in a way which you hoped could not be detected by the authorities.

5. You arranged for the package to be delivered from the USA to the address of a good friend of yours (Julie Wong). The package arrived on 10 December 2013. Because Julie Wong was not at home the package was signed for by a neighbour of hers, who gave it to her later that day. You collected the package from Julie Wong on the following day.
6. You then took it home and opened the package using a plastic carrier bag to protect your hands. You found what appeared to be a fragrance candle in a glass jar. The candle contained a phial of Abrin. That was the usual method which Jesse Korff used, as can be seen from other samples he sent at about the same time. The glass in which the candle was set was broken. You panicked and threw away the package in the wheelie bin outside your house. It was then removed in the ordinary way by refuse collectors. It has never been recovered, so it is not known exactly what quantity and quality the Abrin was.
7. Abrin is a highly toxic substance, which can prove lethal, in particular if it is inhaled or injected. There is no known antidote to it.
8. Although initially you were relieved to have rid yourself of the package, over the next few weeks you again began to want to acquire Abrin. You accept that you attempted to acquire it for a second time in late December and January.
9. In fact Jesse Korff was arrested by the American authorities on 18 January 2014. They proceeded to engage in communication with you pretending to be Jesse Korff for a few days. You were still trying to obtain Abrin although it is clear that it would not have been sent to you by this time.
10. The reason why you obtained Abrin on the first occasion and the reason why you attempted to obtain it for a second time was that you had descended into such a depressed state of mind that you were contemplating either suicide or killing your mother, Meena Patel.

Approach to sentence in cases of this type

11. The maximum sentence for each of the offences concerned is life imprisonment.
12. So far as counsel are aware, this is the first case in which a court has had to sentence for an offence under the Biological Weapons Act. There are no guidelines issued by the Sentencing Council or guidance from the Court of Appeal about such cases.
13. As is well known the Court must have regard to the following purposes of sentencing in accordance with section 142 of the Criminal Justice Act 2003:
  - a) the punishment of offenders;
  - b) the reduction of crime (including its reduction by deterrence);
  - c) the reform and rehabilitation of offenders;
  - d) the protection of the public; and
  - e) the making of reparation.
14. As is also well known, in accordance with section 153 of the same Act, any custodial sentence must be for the shortest term that in the opinion of the Court is commensurate with the seriousness of the offence or the combination of the offence and other offences associated with it.
15. A number of cases have been brought to my attention but none deals directly with the present type of case. Most were examples of sentences which have been passed at first instance. Two are decisions of the Court of Appeal. It seems to me that all those cases turned on their own facts in their own context. In particular I take the view that little assistance can be derived from cases which occurred in the context of terrorism or other offences with a political motivation.
16. In the end, in my view, this sentencing exercise, perhaps even more than most, must depend on the specific facts of the individual case before the Court,

having regard both to the gravity of the offences and the mitigating factors in this particular case.

### Gravity of the offences

17. The Prosecution submitted before me that there were several aggravating features in this case. On your behalf it was submitted that there were no aggravating features and that there is a risk of “double counting”, since certain features of the case are inherent in an offence of this type. Taking care to avoid the risk of double counting, and however they are described, there were, in my view, the following features in this case which go to the gravity of the offences you committed:
  - a) There was a substantial degree of premeditation and research required over a period of time.
  - b) You committed two offences, which shows that you were prepared to persist in trying to obtain Abrin, having thrown it away the first time.
  - c) You used encryption online in order to conceal the commission of your offences. You also lied to the police initially about this in order to throw them off the track.
  - d) You deliberately involved an innocent third party (Julie Wong), who fell under suspicion.
  - e) There was obvious risk to other innocent third parties who had to handle the package in its importation from the USA to this country and its delivery through the ordinary post.
18. The fact is that Abrin is a highly dangerous substance which Parliament has prescribed should simply not be in general circulation. Acquiring it is inherently a serious offence.
19. However in my view there is powerful personal mitigation in this case, to which I now turn.

### Mitigating factors

20. You are aged 37 and of previous good character. You have worked hard both in higher education and in your profession as a graphic designer throughout your adult life.
21. In my view you had to endure a prolonged period of severe stress in the two years leading up to your offences. The jury at your trial heard a great deal of evidence about that background and in particular your relationship with your mother. It is clear that you were a devoted and obedient daughter. It is also clear that your mother was a devoted and caring mother, who worked hard to raise you and your sister, having been separated from your father when you were very young. On the other hand, in the two year period leading up to your offences, she subjected you to a barrage of abuse, often verbal and at times physical, for example slapping you. She would send you emails and texts of the most vile kind, abusing not only you but also your friends and in particular the man you wished to marry. You found yourself in the autumn of 2013 torn between your devotion to your mother and family as a dutiful daughter, and your desire to find happiness for yourself with the man that you wanted to spend a lifetime with. Ultimately you could see no way out and became increasingly depressed and isolated, contemplating killing your mother and yourself.
22. I have taken into account everything else that has been said on your behalf in mitigation, including positive references as to your kind and helpful character, and the fact that you and your mother have now become reconciled.

### Guilty plea

23. As I have mentioned, you pleaded guilty to count 4 and will be given appropriate credit for that. This count was added to the indictment the day before the plea and case management hearing (PCMH) on 2 May 2014. I am informed that there were difficulties obtaining instructions and that you

changed your plea as soon as reasonably practicable. I am therefore invited to treat that plea in the same way as if you had pleaded guilty at the PCMH, which would normally attract a reduction of 25%. I accept that submission.

The principle of totality

24. I bear in mind that I have to sentence you for two offences. However, in my view, the appropriate course in this case would be to make your sentences concurrent with each other, having regard to the totality of your offending behaviour.

Statutory surcharge

25. The legislation on surcharges applies in this case and an order will be drawn up accordingly.

[The defendant should now stand.]

Sentence of the court

26. The sentence of the Court in relation to count 1 is 3 years imprisonment.
27. The sentence of the Court in relation to count 4 is 18 months imprisonment.
28. Both sentences are concurrent, so the total sentence is 3 years.
29. The number of days you have spent on remand will be deducted from that sentence.
30. You will serve up to one half of the sentence. You will then be released on licence and must comply with the terms of that licence and if you do not do so will be liable to recall by the Secretary of State until the end of your sentence.