IN THE CROWN COURT AT St ALBANS

R V NIBEEL AND CHOUDHURY
Decision on Application to lift Reporting Restrictions

The Hon Mrs Justice Foster 20 May 2024

1. In this case an Order has been in place throughout the proceedings under section 45 of the Youth Justice and Criminal Evidence Act 1999 ("the Act") restricting publication of any information that would be likely to identify both the defendants in these proceedings. Umer Choudhury has however turned 18 since that Order was made.

2. On Friday 17th May 2024, the day of the sentence for the murder and other convictions of Rayis Nibeel (RN) and Umer Choudhury (UC), the BBC by its journalist Mr Farmer made an application for the lifting of reporting restrictions in respect of RN. RN will be 18 in September of this year, in about 4 months' time, and no longer protected as a child for the purposes of s 45 of the Youth Justice and Criminal Evidence Act 1999.

3. Mr Joe Stone KC who represented RN at trial resists the application; the Prosecution is neutral but reminds me of the imminence of RN's 18th birthday.

4. The basis of the BBC's application is that there is a real public interest in the reporting of the actual name of RN, given the subject matter of the case which included drugs dealing, knife crime and, it was revealed at sentence, an element also of child criminal exploitation in respect of both defendants.

5. It was expressed by the journalist in question essentially as follows:

    a. Reporting is in the public interest because reporting will enable public debate – and debate will or may produce solutions to the problems reflected in the case.
    b. The courts will recognise the press' interest in publishing the names of individuals "in appropriate circumstances" and the BBC would argue that this case is an "appropriate circumstance". It is argued that naming these defendants is not to make the story more attractive to readers, but that naming names may prevent future crime and save lives. Otherwise, "*how can lessons be learned, how can there be proper discussion, if people do not know the names of the defendants? Surely every teacher, every social worker, every police officer, every judge, every lawyer, who has dealt with these teenagers needs to know that they have been convicted of murder. How can anyone look back and consider whether things could have been done differently if they don't know who the teenagers are? It's too late to help the victim but proper debate and reflection may prevent others being hurt and killed.*"

6. The italicised words are Mr Farmer's.

7. Mr Stone KC who resists says in essence:

    (i) The default position is that young people under 17 convicted of murder are not named for good policy reasons.

    (ii) The danger of retribution and revenge attacks either on the defendant in prison or his family in the community is raised when individuals are named especially given social media when addresses to target will quickly become known.

(iii) There is no good reason why the story cannot be fully reported without giving the names – as has happened on Saturday already - reported in full with no diluting of the core issues.

(iv) We do not know the exact circumstances in which the restrictions were lifted in other cases and there can be no help from cases such Brianna Ghey and others mentioned by reference to the press reports only by the BBC where restrictions were lifted [links were given to the reports in news sources].

(v) It is difficult to see how naming persons is going to assist in ongoing public debate, or assist the debate and lead to a higher level of understanding, indeed quite the reverse.

Consideration

8. I treat Mr Farmer's letter as an application for an excepting direction pursuant to section 45(5) of the Act. Crim PR Part 6 applies to the right to make representations which I heard in short form on Friday, followed up by email today on behalf of the Defendant RN. Part 6 provides for procedural safeguards, which have been applied here.

9. By section 45 of the Youth Justice and Criminal Evidence Act 1999 a restriction on reporting may be imposed as follows:
"...
3) The court may direct that no matter relating to any person concerned in the proceedings shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings.

and by section 45(5) the restrictions may be lifted by the Court in circumstances where the court holds

(a) that their effect is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and

(b) that it is in the public interest to remove or relax that restriction;

but no excepting direction shall be given under this subsection by reason only of the fact that the proceedings have been determined in any way or have been abandoned.

....

(6) When deciding whether to make—

(a) a direction under subsection (3) in relation to a person, or

(b) an excepting direction under subsection (4) or (5) by virtue of which the restrictions imposed by a direction under subsection (3) would be dispensed with (to any extent) in relation to a person,

the court or (as the case may be) the appellate court shall have regard to the welfare of that person."

10. I am of the clear view that on all the facts of this case it is appropriate to regard the public interest in open justice as requiring the publication of RN's name.

11. I recognise that this is an incursion, given his age, to the presumption of the statutory regime, I recognise also there are some possible welfare issues. However here:

    a. RN is very close to his 18th birthday
    b. His co-defendant with whom he was very closely associated in committing the offences does not have the benefit of anonymity.
    c. Given that Umer Choudhury has been named it is likely that RN will be identifiable and as has been said by the press, it is highly likely that in Luton amongst those in the drugs world and others, that their names are both already widely known, it is therefore not likely that any repercussions for the family will be stimulated by the lifting of anonymity of RN rather than provoked by other information, if that were to happen.

       However, primarily I am influenced by the following submission of Brian Farmer, who asks rhetorically:

    d. *"Surely every teacher, every social worker, every police officer, every judge, every lawyer, who has dealt with these teenagers needs to know that they have been convicted of murder. How can anyone look back and consider whether things could have been done differently if they don't know who the teenagers are? It's too late to help the victim but proper debate and reflection may prevent others being hurt and killed.*"

12. I recognise that authority (which I need not traverse here) recognises a strong interest in public justice. I accept of course also that the Article 8 rights of RN are engaged; I accept that there may be some difficulty on entry to detention, although for the reasons given above, RN's identity is likely a fact already known to those who may care about it. In this case there is a powerful reason as expressed by Mr Farmer for saying the public interest of those who have knowledge to contribute to the public debate on the scourge of street drugs and knife violence on the streets of Luton significantly outweighs those rights, and supports the drive to public justice.

13. I have read the remarks of Yip J and accept that Ghey was an exceptional case for other reasons. That case is perhaps useful in this: that a positive outcome, change, reform and consideration of the deeper issues at stake may, when open justice is served, be the result of lifting reporting restrictions at the time of sentence, as it might be thought, has proved in that case.

14. Accordingly, for all of the above reasons, I grant the BBC's application.