

APPROVED

Neutral Citation: [2026] IEHC 641



**THE HIGH COURT
IN THE MATTER OF ARTICLE 40.4.2° OF THE CONSTITUTION**

**Record No. 2026 1136 SS
Record No. 2026 1212 SS
Record No. 2026 1238 SS**

BETWEEN:

PIOTR MICHALZYK

and

JAMES CLARKE

and

JASON RADFORD

APPLICANTS

-and-

THE GOVERNOR OF CLOVERHILL PRISON

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

-and-

THE MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION

NOTICE PARTY

JUDGMENT of Ms. Justice Cathleen Noctor delivered on 22nd September 2026

(A) Introduction

1. This judgment concerns two preliminary issues in three inquiries under Article 40.4.2° of the Constitution.
2. The three inquiries arise against a backdrop of a dispute between the Minister and certain solicitors concerning rates of payment in respect of representing persons accused of criminal offences in the District Court (“*the dispute*”). As a result of the dispute, it appears that few or no solicitors are willing to accept assignments under the new Criminal Justice (Legal Aid) (Amendment) Regulations 2026 (S.I. No. 303/2026) before certain District Courts. One consequence of the foregoing is that accused persons are regularly appearing before the District Court without legal representation, including when they are making applications for bail.
3. The three applicants are charged with criminal offences. In the absence of legal representation, each applicant applied for and was refused bail in the District Court. Thereafter, and with the benefit of legal representation, each applicant sought an inquiry into their detention. By way of general summary, the basis upon which each inquiry was sought was that each applicant was deprived of a meaningful opportunity to seek bail in the District Court. Inquiries were opened in respect of the detention of each applicant at Cloverhill Prison.
4. After an inquiry was opened in respect of a given applicant, each such applicant made an application to the High Court (collectively referred to as “*the three High Court applications*”). The High Court made orders refusing all three applications (collectively referred to as “*the orders refusing the three High Court applications*”).
5. On 11th September 2026, the three inquiries came before me. Given that the legal issues (described below) are one and the same in each case, I decided that all three inquiries (which also involved the same counsel) should be heard simultaneously.

6. Before commencing the three substantive inquiries under Article 40.4.2° of the Constitution on 11th September 2026, and pursuant to an order made by me, the Director of Public Prosecutions (“**DPP**”) and the Minister for Justice, Home Affairs and Migration (“**the Minister**”) were joined to all three proceedings. The DPP was joined as a respondent and the Minister as a notice party.
7. The substantive inquiries commenced on 11th September 2026 and continued on 15th September 2026. All parties delivered written submissions and made oral submissions, and all of which I have considered.
8. On 17th September 2026, I adjourned the inquiries to 21st September 2026. At that time, counsel indicated that Simons J. intended to deliver judgment on 18th September 2026 in a case that involved the same issues which arose in these three inquiries. It was agreed that, once delivered, that judgment would be circulated to the parties and they would be invited to make further submissions before me on 21st September 2026.
9. Simons J. delivered judgment in *Walsh v. Governor of Cloverhill Prison* [2026] IEHC 630 on 18th September 2026. All parties made further oral submissions to me on 21st September 2026 and I reserved my judgment to today’s date.
10. This judgment concerns two preliminary issues that arise in all three inquiries.

(B) Summary of position of the parties and the preliminary issues

11. To provide context for the preliminary issues, a summary of the position of the parties is set out below.

Summary of the DPP’s position

12. In brief, the DPP submitted that all three applicants were refused conventional High Court bail, as opposed to interim release in the context of the Article 40.4.2° proceedings (to use the terminology of Simons J. in *Kiely v. Governor of Cloverhill*

prison [2026] IEHC 603 and *Kinane v. Governor of Cork Prison* [2026] IEHC 604).

13. The DPP submitted that, as of the date of these inquiries, the District Court orders remanding each of the three applicants (and the committal warrants pursuant to which each was detained) post-dated the orders made by the High Court that (according to the DPP) refused their respective conventional bail applications. In consequence of the foregoing, the DPP submitted that each applicant had exercised an effective remedy i.e. after each was refused bail in the District Court, and subsequent to the opening of the inquiry in respect of each of them, *de novo* conventional bail applications were determined by the High Court in proceedings for which each applicant was legally represented and about which no applicant made complaint. On this basis, it was submitted that the detention of each applicant was in accordance with law and grounded on committal warrants that post-dated each being refused High Court bail. Further, on 21st September 2026, the DPP submitted that the inquiries before me were on all fours with the decision in *Walsh*.

Summary of the position of the Governor and Minister

14. Counsel for the Governor and Minister adopted the submissions made on behalf of the DPP and made further submissions that are referred to below.

Summary of the applicants' position

15. On behalf of the applicants, it was submitted that the three High Court applications were made (and refused) in the context of the Article 40 proceedings (i.e. interim release was sought and refused) and with the consequence that the refusals had no impact on the substantive proceedings under Article 40.4.2°. On 21st September 2026, counsel for the applicants accepted that, if this court found that conventional bail was refused by the High Court in respect of any applicant, then the decision in *Walsh* disposed of the issues in this inquiry. As an aside, and perhaps a statement of the

obvious by the court, if any applicant was granted or refused interim release in proceedings brought under Article 40.4.2°, this could never be said to impact upon the substantive proceedings because this would be self-defeating and absurd.

The preliminary issues

16. The preliminary issues for this court's determination are as follows:-
 - (a) whether any (or all) of the orders refusing the three High Court applications was (or were) an order(s) refusing conventional bail (as the DPP, Governor and Minister contended) *or* an order(s) refusing interim release (as the applicants contended); and
 - (b) if, with respect to any applicant(s), this court concluded that the High Court order refused their application(s) for conventional bail, does this mean that that applicant(s) is detained in accordance with law.

(C) Relevant chronologies

A neutral term - provisional release

17. Under this heading only, I describe the application, that each applicant made to the High Court *after* the inquiry into their detention was opened, as one for "*provisional release*". I use this as a neutral term (i.e. neither High Court bail or interim release) to avoid attaching a label at this point that might suggest that the court is categorising the application as being either conventional High Court bail or provisional release.

Mr. Michalzyk

18. The relevant chronology concerning Mr. Michalzyk was as follows:-
 - (a) he was refused bail by the District Court (Naas) on 14th July 2026. He was remanded in custody and a committal warrant issued to the Governor authorising his detention until 21st July 2026;

- (b) the High Court made an order opening an inquiry into his detention pursuant to Article 40.4.2° on 16th July 2026 (per Naidoo J.). On this occasion, an order was made for his production on 20th July 2026 in the Courts of Criminal Justice and the Governor was ordered to certify in writing the grounds for his detention;
- (c) on 20th July 2026, the Governor certified his detention based on the committal warrant described above at (a);
- (d) on 20th July 2026, he made an application for his “*provisional release*” (to use a neutral term referred to above) in the High Court. This was refused (per Naidoo J.) and the substantive proceedings were adjourned to 24th July 2026 before Gearty J. Thereafter the matter was adjourned to 29th July 2026 and was ultimately listed for hearing before this court on 11th September 2026;
- (e) on 11th September 2026, the Governor certified his detention by reference to a committal warrant issued on 3rd September 2026 and which authorised his detention until 17th September 2026; and
- (f) on 22nd September 2026, the Governor certified his detention by reference to a committal warrant issued on 17th September 2026 and which authorised his detention until 23rd September 2026.

Mr. Clarke

19. The relevant chronology concerning Mr. Clarke was as follows:-
 - (a) on 16th July 2026, he was refused bail on certain charges and bail was revoked in respect of other charges before the Dublin Metropolitan District Court;
 - (b) the High Court made an order opening an inquiry into his detention pursuant to Article 40.4.2° on 28th July 2026 (per Hunt J.). On this occasion, an order was made for his production on 29th July 2026 in the Courts of Criminal Justice and the Governor was ordered to certify in writing the grounds for his detention;

- (c) on 30th July 2026, the Governor certified his detention by reference to a committal warrant dated 23rd July 2026 and which authorised his detention until 31st July 2026;
- (d) on 31st July 2026, the High Court (per Gearty J.) made an order for his production in the High Court by video-link on 4th August 2026;
- (e) on 4th August 2026, the Governor certified his detention by reference to a committal warrant dated 31st July 2026 and which authorised his detention until 7th August 2026;
- (f) on 4th August 2026, the proceedings were adjourned to 5th August 2026, on which date he applied for and was refused provisional release (i.e. the neutral term) in the High Court (per Creedon J.). The substantive proceedings were adjourned to 11th September 2026 before this court;
- (g) on 11th and 17th September 2026, the Governor certified his detention by reference to a committal warrant issued on 4th September 2026 and which authorised his detention until 18th September 2026; and
- (h) on 21st September 2026, the Governor certified his detention by reference to a committal warrant issued on 18th September 2026 and which authorised his detention until 9th October 2026.

Mr. Radford

20. The chronology concerning Mr. Radford was as follows:-

- (a) he was refused bail by the Dublin Metropolitan District Court on 7th July 2026;
- (b) the High Court made an order opening an inquiry into his detention pursuant to Article 40.4.2^o on 1st August 2026 (per Reynolds J.). On this occasion, an order was made for his production by video-link on 4th August 2026 in the Courts of Criminal Justice and the Governor was ordered to certify in writing the grounds for his detention;

- (c) on 4th August 2026, the Governor certified his detention by reference to a committal warrant dated 23rd July 2026 and authorising his detention until 6th August 2026;
- (d) on 4th August 2026, the proceedings were adjourned to 5th August 2026, on which date he applied for and was refused provisional release (the neutral term) in the High Court (per Creedon J.). The substantive proceedings were adjourned to 11th September 2026 before this court; and
- (e) on 11th September 2026, the Governor certified his detention by reference to a committal warrant issued on 3rd September 2026 and which authorised his detention until 1st October 2026.

(D) The High Court orders

The Order of the High Court refusing Mr. Michalzyk's application

21. The relevant portions of the order, whereby Mr. Michalzyk's High Court application was refused on 20th July 2026 was in the following terms:-

“ *HH SS 2026 1136 SS*

Monday the 20th day of July 2026

BEFORE MR. JUSTICE KERIDA NAIDOO

IN THE MATTER OF THE CONSTITUTION

PIOTR MICHALZYK

APPLICANT

AND

THE GOVERNOR OF CLOVERHILL PRISON

RESPONDENT

Upon the Application of Counsel for the above named Applicant (DOB [...]) present in person pursuant to Notice of Motion and grounding Affidavit herein for admission to

bail on the charges before the Athy District Court as set out on charge sheet numbers [five charge sheet numbers set out] and there being an objection to bail on behalf of the Director of Public Prosecutions and upon hearing the oral evidence presented before the Court on this day

IT IS ORDERED *that the said Application do stand refused*

AND IT IS ORDERED *that the Respondent herein be at liberty to take up the transcript of the Digital Audio Recording from the [relevant] District Court proceedings sitting at Athy District Court bearing the record number [two District Court cases numbers] and charge sheet numbers [five charge sheet numbers set out] heard on 14th day of July 2026 ...*

IT IS ORDERED *that the substantive proceedings be adjourned to Friday the 24th day of July 2026 at 11.00 am in the forenoon before Ms Justice Mary Rose Gearty in the Four Courts on Inns Quay in Dublin 7 where the Applicant is to be produced in person Costs reserved”.*

The Order of the High Court refusing Mr. Clarke’s application

22. The relevant portions of the order, whereby Mr. Clarke’s High Court application was refused on 31st July 2026, was in the following terms:-

“2026 1212 SS

WEDNESDAY THE 5TH DAY OF AUGUST 2026

BEFORE MS. JUSTICE EILEEN CREEDON

BETWEEN

JAMES CLARKE

APPLICANT

AND

THE GOVERNOR OF CLOVERHILL PRISON

RESPONDENT

IN THE MATTER OF THE CONSTITUTION

The return to the Order herein dated the 31st day of July 2026 coming before the Court on the 4th day of August 2026 and adjourned to this day in the presence of Counsel for the Applicant and Counsel for the Respondent and the Applicant (DOB [...]) present in person via video link

And the proceedings before the Court being treated as a bail application

Whereupon and on reading the Affidavit of Niamh Maher filed on the 27th day of July 2026 and the documents and exhibits referred to therein and on hearing the oral submissions of said respective Counsel and the oral evidence presented to the Court on this day

IT IS ORDERED *that the said Application for bail on the charges as set out on charge sheet numbers [three charge sheet numbers set out] pending before Cloverhill*

District Court do stand refused

AND IT IS ORDERED *that the substantive proceedings be adjourned to Friday the 11th day of September 2026 at 11.00 am in the forenoon before Ms Justice Noctor in the Four Courts on Inns Quay in Dublin 7*

And the Court doth reserve the question of costs”.

The Order of the High Court refusing Mr. Radford’s application

23. The relevant portions of the order, whereby Mr. Radford’s application was refused on 1st August 2026, was in the following terms:-

“Wednesday the 5th August 2026

2026 No. 1238 SS

BEFORE MS. JUSTICE EILEEN CREEDON

BETWEEN

JASON RADFORD

APPLICANT

AND

THE GOVERNOR OF CLOVERHILL PRISON

RESPONDENT

IN THE MATTER OF THE CONSTITUTION

The return to the Order herein dated the 1st day of August 2026 coming before the Court on the 4th day of August 2026 and further adjourned to this day in the presence of Counsel for the Applicant and Counsel for the Respondent and the Applicant (DOB [...]) present in person via video link

And the proceedings before the Court being treated as a bail application

Whereupon and on reading the Affidavit of Elaine Martin filed on the 1st day of August 2026 and the documents and exhibits referred to therein and on hearing the oral submissions of said respective Counsel and the oral evidence presented to the Court on this day

IT IS ORDERED *that the said Application for bail on the charges before the Dublin District Court (Court No. 10 CCJ) as set out on case numbers [four case numbers specified] and charge sheet numbers [29 charge sheet numbers set out] do stand refused*

AND IT IS ORDERED *that the substantive proceedings be adjourned to Friday the 11th day of September 2026 at 11.00 am in the forenoon before Ms Justice Noctor in the Four Courts on Inns Quay in Dublin 7*

And the Court doth reserve the question of costs

(E) Commonalities and differences between the three applicants

24. In oral submissions, counsel for the applicants submitted that at no stage was it considered, intended or understood that an application for conventional High Court bail was being made on behalf of any of the three applicants. It was submitted that it would have been irrational to have applied for conventional High Court bail. It was submitted that it was “*intended*” to make a bail application in the context of Article 40 proceedings (i.e. interim release).
25. It was common case between the parties that no notice of motion issued in respect of any of the three High Court applications (notwithstanding a recital to the contrary appearing in the order refusing Mr. Michalzyk’s application— see paragraph 21 above). Further, the High Court applications were moved on the same affidavit that grounded the respective applications for the opening of the inquiries (namely, those sworn by Tracy Horan, solicitor, on 16th July 2026 in respect of Mr. Michalzyk, by Niamh Maher, solicitor, on 27th July 2026 in respect of Mr. Clarke and by Elaine Martin on 1st August 2026 in respect of Mr. Radford).
26. In these inquiries, the parties confirmed that, in respect of all three High Court applications, no submissions were made to the High Court concerning the “*underlying merits*” of the relevant Article 40 application (as that term is used in *Kiely v. Governor of Cloverhill Prison* [2026] IEHC 603 and *Kinane v. Governor of Cork Prison* [2026] IEHC 604 - see further below at paragraphs 33-34).
27. In addition, the parties agreed that there was, in fact, no difference between the way in which the three High Court applications were made and heard *and* the way in which a conventional bail application might proceed, namely oral evidence was heard of the objection to bail (as had occurred in the District Court) and included objections grounded on certain *O’Callaghan* principles and / or section 2 of the Bail Act 1997 as

appropriate. That said, counsel for the applicants submitted that all parties proceeded on the basis that the criteria for granting interim release were identical to the criteria that would apply in a conventional bail application. Counsel for the DPP, on the other hand, submitted that there was “*no need*” for the DPP to ask the applicants to identify “*interim release grounds*” because all applications were run as conventional High Court bail applications.

28. Considering paragraphs 26-27 above, this court formed a view that there was nothing to be achieved by this court listening to the Digital Audio Recordings (“*the DAR*”) of the hearings of any of the three High Court applications (or by securing and reading the transcripts thereof). Indeed, such a course of action was not urged upon the court and, on 21st September 2026, the parties confirmed their agreement with the court’s view.
29. With respect to Mr. Michalzyk only, counsel for the applicant requested that this court listen to and consider the DAR concerning the application for the opening of the inquiry on 16th July 2026. It was submitted that it would be readily apparent from the DAR that the applicant was intent on seeking interim release rather than conventional High Court bail. There was no objection to the court listening to the DAR and, insofar as it might be considered relevant (although, as will be seen below, I think it was not), the following was recorded therein:-

“Counsel for the applicant: My application however judge in respect of this matter would be to make this returnable tomorrow. I am instructed that [the applicant] wants to make an application for bail in the context of –

Judge: Yes, I – if we can, if I understand you correctly, there is no dispute about this. As I understand it the way that the other cases have been dealt with, I understand this generally, there is a bail application heard by this court.

Counsel for the applicant: Yes

Judge: And then without prejudice to the Article 40 application in effect the case is remanded. The substantive application is remanded to Ms Justice Gearty on Friday week.

Counsel for the applicant: I think it is inevitable that this matter will be going back to Friday of next week for the substantive hearing but with respect to the bail application in the Article 40 proceedings, to be clear that is other than a High Court bail application.

Judge: I understand. I do not think there is any dispute. I think if I can say that obviously there is an important principle at issue here, but I also think there is a pragmatic approach being taken as to how to deal with it by the court and the State.

Counsel for the applicant: My application judge well can I say judge that what has happened in some of the cases, a few of the cases in fact, bail was agreed in the context of the Article 40, in at least one case, in which myself and Mr Monahan also appeared. There was a bail application with objections. Your colleague Ms Justice Gearty heard that and in effect refused bail while indicating that it could be revisited if certain matters were attended to. So that is what has been happening so far. My application today would be if the Court could list this returnable for tomorrow. I don't know if that should be – I was going to ask the Court to make it returnable to Court 6 if Ms Justice Gearty is sitting tomorrow. There may be that –

Judge: The purpose in effect for an adjournment tomorrow is to be a bail application in the case. [Emphasis added]

30. Thereafter the DAR recorded: an exchange concerning the logistical issues of making a bail application; the court making the bail application returnable to Monday 20th July

2026; the making of an order opening the inquiry; and the making of an order that the substantive Article 40 proceedings be made returnable to Monday 20th July 2026.

31. With respect to Mr. Radford only, counsel for the applicant asked the court to consider correspondence exchanged by email between Mr. Radford’s solicitor and the DPP’s office on 1st August 2026 (some four days before Mr. Radford’s High Court application was made and refused). Although this correspondence was not proven on affidavit, counsel for the DPP was given an opportunity to review it in court and thereafter no objection was raised to the court receiving a copy of it in the inquiry. Insofar as it might be relevant (although, as will be seen below, I think it was not), the following was recorded therein:-

- (a) an email from the applicant’s solicitor to a solicitor in the office of the DPP stating

inter alia “[p]lease note that this application is returnable to the CCJ on Tuesday (4/8//26) for a bail application in the High Court ...”;

- (b) a subsequent email from the same solicitor in the office of the DPP to the applicant’s solicitor enquiring “*did [the High Court] specifically indicate that this case was to be adjourned for the purpose of a High Court bail application?*”; and

- (c) a response from the applicant’s solicitor stating “*[p]lease see attached order. The Inquiry was adjourned to Tuesday in the CCJ and for a bail application in the context of the article 40*”.

32. As somewhat of an aside, insofar as the contents of paragraph 31(c) above might suggest that the High Court order of 1st August 2026 recited that the High Court adjourned the matter on that occasion for the hearing of a bail application “*in the context of the Article 40*”, the High Court order of this date makes no reference to anything regarding any intended application for conventional bail or interim release.

(F) Relevant law on the first preliminary issue

Difference between conventional High Court bail and interim release

33. In *Kiely v. Governor of Cloverhill prison* [2026] IEHC 603 and, considering the distinction as between interim release (in the context of Article 40 proceedings) and an order made by the High Court exercising its full and original jurisdiction to embark upon a *de novo* hearing of a bail application (as opposed to acting as an appellate court in respect of a lower court refusing a bail application), Simons J. considered the position thus:-

“20. *Article 40.4.2° mandates the High Court to inquire forthwith into a complaint that a person is being unlawfully detained. As explained by Barrington J. in State (Whelan) v. Governor of Mountjoy Prison [1983] I.L.R.M. 52, this obligation stresses the importance and the urgency of habeas corpus proceedings but does not mean that the High Court should ‘skimp its enquiry or proceed on an inadequate understanding of the law or the facts’. Once the inquiry has been entered upon, and provided its urgency and importance are kept in mind, the court is entitled to conduct it in the manner best calculated to resolve the issues of law and fact and to achieve the interests of justice.*

21. *Barrington J. went on then to say that where an inquiry raises difficult issues of law or fact, the court may have to consider whether the detained person should be admitted to bail until these issues are resolved. As explained earlier, the term ‘interim release’ will be used by me to describe this form of bail.*

22. *The existence of a jurisdiction to direct interim release must not be allowed to displace the urgency of an inquiry under Article 40.4.2°. It would not be appropriate to allow an inquiry to drift merely because an applicant has been granted interim release. The Constitution requires that a determination be*

made urgently in respect of the lawfulness of the detention. The need for a prompt determination is especially acute in circumstances where the interim release is subject to conditions, such as a requirement to reside at an approved address or to surrender one's passport. Such conditions arguably affect the individual's liberty and should not be prolonged any more than is necessary to complete the inquiry.

23. *Although the existence of a jurisdiction to direct interim release has long been recognised, there is little discussion in the case law as to the threshold to be applied in determining whether to direct the interim release of the detained person pending the completion of the inquiry under Article 40.4.2°.*
24. *Approaching the matter from first principles, the threshold cannot simply be the same as that governing a conventional bail application in the context of criminal proceedings. This is because the starting point for the analysis is different in each instance.*
25. *In a conventional bail application, the accused person enjoys the presumption of innocence and, as a corollary, a presumption in favour of bail. The burden of proving that the accused person should not be admitted to bail lies upon the prosecution. The allocation of the burden of proof is more complex in an application for interim release. The accused person, of course, continues to enjoy the presumption of innocence. However, there is no presumption in favour of interim release in cases where the accused person is being detained pursuant to an order which is valid on its face and made by a court of competent jurisdiction. Such an order is prima facie valid.*
26. *It is correct to say that the High Court—in an exceptional case—has the capacity to direct the release of an applicant notwithstanding the existence of*

such a court order. Crucially, this is normally only ever done following the completion of the Article 40.4.2° inquiry and the making of a determination that the detention is not in accordance with law. An applicant who seeks interim release takes on the burden of persuading the High Court that his is an appropriate case in which to ‘look through’ the District Court’s remand order prior to the completion of the inquiry. Such an applicant invites the High Court to disregard the legal effect of an order which is prima facie valid prior to a final determination of the inquiry.

27. It would be inappropriate to do so unless the applicant had satisfied a threshold related to the underlying merits of the complaint that he is being detained unlawfully. It would not be enough for an applicant who is, for example, held pursuant to a post-conviction order, to establish that he is not a flight risk.
28. A loose analogy can be drawn with the approach taken to interim orders in judicial review proceedings. In *Okunade v. Minister for Justice, Equality and Law Reform* [2012] IESC 49, [2012] 3 I.R. 152, the Supreme Court held that the burden rests upon the applicant seeking a stay to establish an arguable case on the merits. An applicant must justify the court’s departure from the existing legal position by demonstrating that the risk of injustice from allowing the prima facie valid order to take effect is greater than the risk of injustice from staying it. In carrying out that assessment, the court must give all appropriate weight to the orderly implementation of the order unless and until it is set aside.
29. It is not necessary for the resolution of these proceedings to attempt to articulate the precise threshold which has to be met by a detained person who seeks interim release. The point for present purposes is a narrower one. It is that whereas an application for interim release may partake of some of the

characteristics of a conventional bail application—for example, in terms of the assessment of flight risk—the starting point is different. The detained person must meet a minimum threshold related to the merits: he must be able to demonstrate to some objective standard that he has arguable grounds for saying that the detention is unlawful.

30. *The fact that an inquiry has been directed does not, without more, establish an entitlement to interim release. The opening of an inquiry merely establishes that a sufficient question has arisen to require the detainer to justify the detention. An applicant seeking interim release must additionally persuade the court that release is appropriate pending completion of that inquiry, having regard to a provisional assessment of the underlying merits, the consequences of continued detention, the prima facie validity of the remand order and any countervailing considerations relevant to bail.*
31. *The balance of justice will ordinarily favour the expeditious completion of the inquiry under Article 40.4.2°, rather than the grant of interim release pending its determination.*
32. *In summary, an application for interim release involves a different and more layered test than that governing an application for conventional bail. An applicant who institutes Article 40.4.2° proceedings and then seeks to be released prior to the completion of the inquiry without addressing these additional factors is, in effect, making an application for conventional bail*”
[emphasis added].

...

36. *By contrast, an order for interim release is intended to regulate the interregnum between the opening of an inquiry under Article 40.4.2° and its determination.*

The rationale for this type of bail has been explained as follows in State (Aherne) v. Cotter [1982] I.R. 188 (at p. 204):

*‘The grant of bail to an applicant in *habeas corpus* proceedings is not unusual, but the rationale for granting it is to ensure that, if at the end of the proceedings the detained person is successful, he will not be able to say with any justification that he was unnecessarily deprived of his liberty during the *habeas corpus* proceedings.’*

37. *For this reason, the duration of the interim release is coterminous with the inquiry. The applicant is temporarily released from detention pending the conclusion of the inquiry.”*
34. Simons J. made similar statements concerning this distinction in *Kinane v. Governor of Cork prison* [2026] IEHC 604 (at paragraphs 27-39 and 45-46) and more recently in *Walsh v. Governor of Cloverhill Prison* [2026] IEHC 630 (including at paragraphs 16-20 and 22).
35. It may also be observed that, previously, in *McGee v. Governor of Castlerea Prison* [2023] IEHC 248, Simons J. stated (albeit *obiter dictum*) as follows:-
- “39. ... It seems to me that the appropriate approach to adopt on a bail application pending the completion of an inquiry is for the court to make some assessment of the strength of the *habeas corpus* application on a provisional basis. If, for example, the court were satisfied, on the basis of its initial consideration of the matter, that there were strong grounds for contending that the detention is unlawful, then it might be appropriate to grant bail pending the more in-depth consideration of the matter necessitated to complete the inquiry. (This is subject to any countervailing factors, such as flight risk)”.*

Determining whether an order was made in a conventional High Court bail application or application for interim release

36. In *Kiely*, Simons J. held:-

“41. A court order falls to be interpreted objectively by reference to the ordinary and natural meaning of the words used, read in the context in which the order was made. It is essential that the parties understand what the order requires them to do ... The broader context confirms the meaning conveyed by the wording of the order.”

37. Simons J. held the same in *Kinane* (paragraphs 41-42). He added that *“it is impermissible to interpret an order by reference to the subjective views of one party or the other”* and *“[s]ubject always to the primacy of the words of the order, it may be permissible to have regard to the broader context in which the order was made”* (at paragraphs 41 and 42 respectively) (emphasis added). Again, he made similar statements in *Walsh* (at paragraph 22 and 28), and at paragraph 22 repeated that which he said at paragraph 41 of *Kiely* (and set out above at paragraph 36).

38. Simons J. made the same pronouncement in all three cases, namely that a court order must be objectively interpreted on the basis of the ordinary and natural meaning of the words used therein and read in the context in which the order was made (as distinct from the application that one or other of the parties understood that they were making to the court).

(G) Submissions of the parties regarding the nature of the three High Court applications

Submissions on behalf of the respondents and notice party

39. On behalf of the DPP, written submissions were received and these were elaborated upon in oral submissions on 11th, 15th and 21st September 2026. The essence of these

submissions is set out above at paragraphs 12-13. I have considered the submissions that were made in respect of the actual contents of the orders refusing the three High Court applications.

40. On behalf of the Governor and the Minister, written submissions were also received, and counsel adopted the DPP's written and oral submissions.

Submissions on behalf of the applicants

41. As indicated above, counsel for the applicants submitted that all three High Court applications were made in the context of the Article 40 proceedings. It was further submitted that, whether an application was for conventional bail or interim release, "*it [was] all the same*".
42. It was urged upon this court to have regard to the fact that the decision in *Kiely* was handed down by Simons J. on 28th August 2026, whereas all of three High Court applications were brought (and refused) prior to 28th August 2026.
43. It was submitted that it was not considered necessary to satisfy any threshold related to the "*underlying merits*" of the complaint that the applicants were being detained unlawfully when the three High Court applications were made.
44. Counsel for the applicants submitted that it was unclear as to why Simons J. did not conclude that in order to succeed, in an application for interim release, it was sufficient that (a) a High Court judge had previously concluded (in the context of opening the inquiry under Article 40.4.2°) that there was a "*serious issue arising which requires an inquiry*" and (b) the High Court was also satisfied of other matters that would generally arise in the context of a bail application (e.g. regarding an applicant as a flight risk etc.). The court understands this to be a submission to the effect that, on a practical level, the High Court should treat an application for interim release in precisely the same way as it does an application for conventional High Court bail.

45. Counsel for the applicants submitted that the judgments of Simons J. in *Kiely* and *Kinane*, regarding the application of a “*a more layered test*” in an application for interim release, was “*an unsustainable proposition*”. It was submitted that *Kiely* and *Kinane* were inconsistent with the *ratio decidendi* of the judgment of the Supreme Court in *State (Aherne) v. Cotter* [1982] I.R. 188 and reliance was placed on the statement made by Henchy J. in *Aherne* that is set out at paragraph 36 of the judgment of Simons J. in *Kiely* (see paragraph 33 above). Reliance was also placed *inter alia* on extracts from judgments in *Sharma v. Member in Charge of Store Street Garda Station* [2016] IEHC 611 (paragraph 3), *State (Whelan) v. Governor of Mountjoy Prison* [1983] I.L.R.M. 52 and upon extracts from the foregoing judgments as are referred to in *Holmes on Habeas Corpus Practice and Procedure* (2025) at pages 72-73.
46. However, while the decisions referenced above at paragraph 45 are authorities for the obvious principle that bail *may* be granted in the context of an application under Article 40.4.2°, counsel for the applicants did not identify any authority for the principle that was advanced by him at paragraph 43 above or indeed any legal basis for asserting that the “*more layered test*” in respect of interim release was an unsustainable proposition (see paragraph 45 above). Further, while counsel for the applicants referred to the authorities set out above at paragraph 45, no consideration appeared to have been given to the observations made by Simons J. in *McGee v. Governor of Castlereagh Prison* [2023] IEHC 248, regarding the appropriate approach to be taken to the consideration of an application for interim release (and in respect of which this court invited submissions on 21st September 2026).
47. I have also considered the submissions that were made in respect of the actual contents of the orders refusing the three High Court applications and the additional submissions made in respect of the decision in *Walsh* on 21st September 2026.

(H) Analysis and decision on the first preliminary issue

Law to be applied

48. I agree with the distinction made by Simons J. between conventional bail and interim release in the context of an inquiry under Article 40.4.2° (see above at paragraphs 33-34) and I will apply that distinction.
49. I further agree with Simons J.'s views regarding the assessment that must be conducted in terms of determining whether an order of the High Court is one refusing conventional High Court bail or one refusing interim release (see above at paragraphs 36-37).
50. I am also alive to the fact that, in *Walsh*, Simons J. considered the same issue as arose here (and he concluded that the order in that case was one refusing conventional High Court bail). Of relevance, and as raised by me with counsel on 21st September 2026, counsel for the applicant in *Walsh* sought to liken the High Court order concerning the applicant with the order that was made in Article 40 proceedings in *McCormack v. Governor of Mountjoy Women's Prison* [2026] IEHC 554. However, Simons J. distinguished the order made in *McCormack* on the basis that the order in that case expressly admitted the applicant to bail "*pending the determination of the proceedings in this Court*", required her to attend the High Court during the hearing and at its final determination and required her to surrender to prison if the Article 40.4.2° proceedings were dismissed. Simons J. held that purpose and duration of the release in *McCormack* were defined by reference to the 40.4.2° proceedings and that the order in *Walsh* did not so provide (at paragraph 26). Similar distinctions may be made between the High Court order made in *McCormack* and the orders made in respect of the three applicants in the present case.

The High Court order concerning Mr. Michalzyk

51. The order refusing Mr. Michalzyk's application on 20th July 2026 recited that the

application was made in proceedings bearing the record number to the Article 40 proceedings. The order was titled “*In the matter of the Constitution*” and between Mr. Michalzyk, described as applicant, and the Governor, as respondent. The order further recited that the application was made pursuant to a notice of motion (which it was not) and grounding affidavit for admission to bail on the charges before Athy District Court on 5 charge sheets, the numbers of which were recited in the order. The order recited that there was an objection to bail on behalf of the DPP and oral evidence was heard during the application. Finally, it was ordered that “*the substantive proceedings*” be adjourned to 24th July 2026 at 11.00 a.m. before Gearty J. in the Four Courts where Mr. Michalzyk was to be produced in person.

52. In my view, this order cannot reasonably be interpreted as an order refusing interim release in the Article 40.4.2° proceedings. In particular, notwithstanding the title to the proceedings as reflected in the order, and the order for the adjournment of the substantive proceedings, it is clear that the application was for admission to bail on the District Court charges, rather than a release or bail for the duration of the Article 40.4.2° proceedings. Oral evidence was called on behalf of the DPP in support of her objections, and an order was made refusing bail on the District Court charges.
53. The ordinary and natural meaning of the words used in an order may be read in the context in which the order was made. Counsel for the applicants (and in particular on 21st September 2026 and by reference to paragraph 22 of *Walsh*) urged upon this court that, in essence, context was everything and that the procedural history should be examined including any averment in the affidavit that grounded the applications for the opening of the inquiries (and specifically any averment to the effect that the inquiry was sought on the basis that no appropriate, alternative remedy was available and that making an application for conventional bail was not an effective remedy). However,

the context was in fact one in which no submissions were made concerning the “*underlying merits*” of the Article 40.4.2° application and that, in fact, there was no difference between the way in which the High Court application proceeded and the way in which a conventional bail application would proceed. The parties are in agreement that this was so.

54. In my view, insofar as the order refused Mr. Michalzyk’s application, it was one refusing him conventional High Court bail. No application was made to amend that order. On the day that the inquiry was opened, counsel for the applicant characterised Mr. Michalzyk’s intended bail application as one “*in the Article 40 proceedings*” (see paragraph 29 above). However, a subjective categorisation of an intention cannot be relevant to an assessment of the substance of the application that followed or, indeed, the order that was made following that application. I do not agree that the procedural history or any averment in an affidavit grounding an application for the opening of the inquiry (and particularly that in the nature set above out at paragraph 53) can have any relevance to an assessment of the context in which a subsequent order of the High Court was made. Finally, regarding the adjournment of the substantive proceedings, I agree with Simons J. in *Walsh* (at paragraph 24) that this adjournment confirmed that the inquiry remained extant, but it did not translate the refusal of conventional High Court bail into a refusal of interim release.

The High Court order concerning Mr. Clarke

55. The order refusing Mr. Clarke’s application on 5th August 2026 recites that the application was made in proceedings bearing the record number to the Article 40 proceedings. It was entitled “*In the matter of the Constitution*” and between Mr. Clarke, described as applicant, and the Governor, as respondent. The order further recited: “*the proceedings before the court being treated as a bail application*”. It recited and

ordered: “*whereupon reading the affidavit of Niamh Maher filed on 27th July 2026 and the documents and exhibits referred to therein, and on hearing the oral submissions of said respective counsel and the oral evidence presented to the court on this day, IT IS ORDERED that the said application for bail on the charges set out in [three specified charge sheets] pending before Cloverhill District Court do stand refused*”. Finally, it ordered that “*the substantive proceedings*” be adjourned to 11th September 2026.

56. In my view, this order cannot reasonably be interpreted as an order refusing interim release in the Article 40.4.2° proceedings. In particular, notwithstanding the title to the proceedings as reflected in the order and the order for the adjournment of the substantive proceedings, it is clear that the application was for admission to bail on the District Court charges, rather than a release or bail for the duration of the Article 40.4.2° proceedings. The DPP called oral evidence in support of her objection to bail, and an order was made refusing the bail sought on those District Court charges. The order itself recites that the proceedings before the court were being treated as “*a bail application*”.
57. Again, it is common case between the parties that no submissions were made in the High Court concerning the “*underlying merits*” and the High Court application proceeded in the same way as a conventional bail application. Again, this is the context in which the order was made.
58. In my view, insofar as the order refused Mr. Clarke’s application, it was one refusing conventional High Court bail. No application was made to amend that order. Regarding the recital concerning the adjournment of the substantive proceedings, as indicated above, again I agree with Simons J. in *Walsh* (at paragraph 24) that, while the adjournment confirmed that the inquiry remained extant, it did not translate the refusal of conventional bail into a refusal of interim release.

The High Court order concerning Mr. Radford

59. The order refusing Mr. Radford's application on 5th August 2026 recites that the application was made in proceedings bearing the record number to the Article 40.4.2° proceedings. The order was titled "*In the matter of the Constitution*" and between Mr. Radford, described as applicant, and the Governor as respondent. The order further recited that "*the proceedings before the court being treated as a bail application*". It further recited and ordered that "*whereupon reading the affidavit of Elaine Martin dated 1st August 2026 and the documents and exhibits referred to therein, and on hearing the oral submissions of said respective counsel and the oral evidence presented to the court on this day, IT IS ORDERED that the said application for bail on the charges before [the relevant District Court] as set out in [four specified case numbers and 29 specified charge sheets] pending before Cloverhill District Court do stand refused*". Finally, it was ordered that "*the substantive proceedings*" be adjourned to 11th September 2026.
60. In my view, this order cannot reasonably be interpreted as an order refusing interim release in the Article 40.4.2° proceedings. In particular, notwithstanding the title to the proceedings as reflected in the order and the order for the adjournment of the substantive proceedings, it is clear that the application was for admission to bail on the District Court charges, rather than a release or bail for the duration of the Article 40.4.2° proceedings. Again, the DPP called oral evidence in support of her objection and an order was made refusing the bail sought on those District Court charges. The order itself recites that the proceedings before the court were being treated as a "*bail application*".
61. The agreement between the parties set out at paragraph 26-27 also applies in respect of Mr. Radford (i.e. no submissions made in the High Court concerning the "*underlying*

merits” and the High Court application proceeded in the same way as a conventional bail application). Again, in my view, that is the significant context in which the order was made.

62. In my view, insofar as the order refused Mr. Radford’s application, it was one refusing him conventional High Court bail. No application was made to amend that order. With respect to the submission made by counsel for the applicant regarding Mr. Radford’s solicitor’s assertion (in an email dated 1st August 2026) that, the inquiry having been opened that day, it was adjourned to “*Tuesday in the CCJ and for a bail application in the context of the Article 40*” (see paragraph 24 above), this is not borne out by the order of the High Court of 1st August 2026. That aside, a categorisation of the application that was anticipated would be made is not relevant to an assessment of the hearing that followed and the context in which an order was made following that hearing. Regarding the recital concerning the adjournment of the substantive proceedings, again, I agree with Simons J. in *Walsh* (at paragraph 24) that, while the adjournment confirmed that the inquiry remained extant, it did not translate the refusal of conventional bail into a refusal of interim release.

Determination of the first preliminary issue

63. For the reasons set out above, this court holds that the High Court order of 20th July 2026 (in respect of Mr. Michalzyk) and 5th August 2026 (in respect of Mr. Clarke and Mr. Radford) were orders refusing conventional bail.

(I) The second preliminary issue – the consequence of finding that the three High Court orders refused conventional High Court bail

64. The second preliminary issue concerns the consequence of this court’s finding on the first preliminary issue, namely what is the consequence of this court’s finding that the

three High Court orders were orders refusing conventional bail? In other words, how does the fact that conventional bail was refused by the High Court impact on the substantive Article 40.4.2° proceedings?

DPP's submissions

65. The DPP's submissions on this issue are summarised above at paragraphs 12-13. More specifically in the context of the second preliminary issue, counsel for the DPP referred the court to the judgments of Humphrey J. in *Grant v. Governor of Cloverhill Prison* [2015] IEHC 768 and that of Simons J. in *Nevin and others v. Governor of Castlerea Prison and others* [2026] IEHC 601 (and specifically in the context of Simons J.'s judgment therein concerning the third named applicant ("**Mr. McDonagh**").
66. *Grant* made an application under Article 40.4.2° after he was refused bail in the District Court on 7th November 2015. The inquiry was conducted in the High Court on various dates between the 9th and 23rd November 2015. The applicant submitted that the District Court committal warrants were fundamentally flawed and that his release should be ordered. There were three committal warrants in total. The court held that, while there were fundamental defects in the first two warrants, they were spent and the third (and extant warrant) of 18th November 2025 was not defective. Relief was refused.
67. In *Nevin*, and specifically regarding Mr. McDonagh, bail was refused on 11th August 2026 and Mr. McDonagh was remanded in custody for one week. The High Court directed an inquiry under Article 40.4.2° on 17th August 2026. The District Court made a further remand order on 18th August 2026 and the inquiry commenced in the High Court on 19th August 2026. On the basis that the order certifying Mr. McDonagh's detention was the District Court order of 18th August 2026 (rather than the order of 11th August 2026 that was under challenge in inquiry), the DPP contended that any defect in the bail hearing of 11th August 2026 was cured by the District Court order of 18th

August 2026. This, it was argued, represented “*a new consideration by a judge and a new remand*”. Although there was no fresh bail hearing on 18th August 2026, counsel for the DPP relied on the absence of any challenge to the latter remand order. In support of the foregoing submission, the DPP relied on the fact that *Grant* was authority for the proposition that, where the detention under challenge “*had moved on a few orders thereafter*”, the lawfulness of Mr. McDonagh’s detention fell to be determined by reference to the current remand order (i.e. that of 18th August 2026).

68. Simons J. rejected the DPP’s contention regarding Mr. McDonagh in *Nevin*. He considered the position thus:-

“91. ... *The normal sequence of events is that an accused person is brought before the District Court, has a bail hearing, and is ordinarily only entitled to make a fresh application for bail where there has been a change in circumstances. The remand hearing on 18 August proceeded on the basis that the question of bail had already been determined on 11 August 2026. There was no fresh bail hearing or independent determination on 18 August 2026. The latter remand order simply continued to remand Mr McDonagh in custody on the footing that the earlier refusal of bail governed the position. The breach of fundamental requirements [in the District Court concerning Mr. McDonagh as were earlier identified in the Nevin judgment] is not spent as a result of the expiration of the first remand order: it infects the legal basis for Mr McDonagh's continued detention.*

...

93. *The circumstances of the present case are distinguishable from those at issue in Grant v. Governor of Cloverhill Prison. The defect is not confined to an earlier remand order which is now spent. The District Court refused bail on 11*

August 2026 in proceedings which are not cognisable in law as a bail hearing. The refusal of bail underpinned Mr McDonagh's continued detention pursuant to the second remand order.

94. *By contrast, the judgment in Grant addressed a scenario whereby the detained person sought to rely on defects on the face of the earlier remand orders to challenge his current detention. This is the context in which Humphreys J. held that a prior period of unlawful detention, whether administrative or judicial, does not contaminate a subsequent lawful period of detention ordered by a court. The judgment does not suggest that a fundamentally flawed decision to refuse bail should be regarded as spent once the first period of remand is spent.*
95. *This is apparent from the structure of the analysis in the judgment itself. Humphreys J. expressly recorded that the complaint concerning the allegedly flawed bail hearing in Grant was not to be treated as moot merely because further remands had occurred. The learned judge proceeded to determine separately whether the original bail hearing had been affected by a defect sufficiently fundamental to justify relief under Article 40.4.2°. It was only after deciding that issue against the applicant that the judgment moves on to a consideration of the distinct question of whether ex facie errors in the earlier, spent committal warrants affected the lawfulness of the detention under the current warrant. It was in that latter context that Humphreys J. held that a prior period of unlawful detention does not contaminate a subsequent lawful period of detention ordered by a court and that there is no “fruit of the poisoned tree” or “domino theory”.*
96. *In the present case, the remand of 18 August 2026 involved neither a fresh bail hearing nor an independent reconsideration of the grounds for detention. It did*

not cure the fundamental denial of a hearing cognisable in law on 11 August 2026.

69. In the proceedings before me, counsel for the DPP agitated for the present cases to be distinguished from *Nevin* (and in particular Mr. McDonagh) on the basis that there was a fresh bail hearing (in the High Court) and that this gave the three applicants in the present case an effective remedy for the complaints they made concerning the hearing of their respective applications for bail in the District Court. Emphasis was also laid on the principle that relief under Article 40.4.2° is only available in rare and exceptional cases and I was reminded of the analysis of this principle by Simons J. in *Ennis v. Governor of Cloverhill Prison* [2026] IEHC 599. On the foregoing basis, the DPP submitted that the applicants were in lawful custody and that this court should refuse to direct their release.

Submissions of Governor and Minister

70. As indicated elsewhere, counsel for the Governor and Minister adopted the DPP's submissions. Counsel for the Governor and Minister further submitted that, in Article 40.4.1° of the Constitution (“*No citizen shall be deprived of his personal liberty save in accordance with law*”) “*in accordance with law*” referred to all the systems and structures that have been provided to vindicate the rights guaranteed by the Constitution, that the opportunity to apply for High Court bail was a core part of that system, was a safeguard of an individual's liberty and was a central plank of the State's response to its obligations under Article 40. It was submitted that the opportunity to apply for High Court bail could not be ignored and was directly relevant to the issue of whether a particular applicant's liberty was in accordance with law. Further, where such a hearing was held, and about which no complaint was made, this was in “*accordance with law*” and relief by way of *habeas corpus* was therefore not available.

Reliance was placed on the Supreme Court decision in *A.B v. Chief International Protection Officer* [2026] IESC 23 and in particular paragraphs 78-79, 83, 90 and 95 thereof as authority for the principle that one does not assess whether something is occurring “*in accordance with law*” by reference to a single incident or a single hearing and one must consider whether the rule of law is vindicated by the system as a whole. It was submitted that this was authority for the principle that, when a High Court bail hearing took place (about which no complaint was made), relief under Article 40.4.2° no longer applied because the detention was in accordance with the law within the system as a whole. On 21st September 2026, counsel submitted that the *Walsh* decision supported the foregoing type of analysis.

Applicants’ submissions

71. At the resumed hearing of this application on 21st September 2026, counsel for the applicants conceded that, if this court found that the High Court refused conventional High Court bail in respect of any applicant, this, on the authority of *Walsh*, would bring the matter to an end.

Determination of the second preliminary issue

72. Notwithstanding the concession on behalf of the applicants (see paragraph 71 above), this court agrees with the distinction that the DPP makes between the findings of Simons J. in *Nevin* (regarding Mr. McDonagh) and the present cases and does so by virtue of the fact that each applicant was refused conventional bail in the High Court.
73. I agree with the analysis and decision of Simons J. in *Walsh*. This determines the second preliminary issue. Therein, Simons J. said and held as follows:-

“46. [The High Court’s determination refusing conventional High Court bail] did not retrospectively validate the earlier District Court proceedings. Its significance is that the alleged unlawfulness arising from those proceedings no

longer attaches to the Applicant's continuing detention. Article 40.4.2° is directed to the lawfulness of the detention as it presently exists, rather than to the retrospective adjudication of its legal status at an earlier point in time.

...

54. *Here, the High Court, in the exercise of its full and original jurisdiction in bail matters, made a fresh determination ... that lawful grounds existed for refusing bail. From that date, the Applicant's continuing detention possessed the fundamental legal attribute alleged to have been absent from the earlier period following the District Court refusal, namely, a proper judicial determination as to whether the Applicant should be admitted to bail. Each subsequent remand in custody, including that evidenced by the current committal warrant, post-dated and occurred against the background of that intervening and unchallenged determination. The Applicant's detention is now in accordance with the law.*

...

58. *The Applicant is currently being held pursuant to a committal warrant issued by the District Court ... The District Court has jurisdiction to issue such a committal warrant pursuant to section 22(1) of the Criminal Procedure Act 1967. The section provides that where the District Court remands a person or sends him forward for trial, it may commit him to prison or other lawful custody. The committal warrant is valid on its face and records an order made by a court of competent jurisdiction. Save in an exceptional case, a person detained in such circumstances will be regarded as being detained in accordance with the law.*
59. *If the inquiry were to be decided solely by reference to the committal warrants,*

the detention would be held to be in accordance with the law. To succeed in his application, therefore, the Applicant must persuade the High Court to treat this as an exceptional case and to “look through” the chain of committal warrants. The High Court is invited to examine the legal character of the bail hearing which took place before the District Court ... and to hold that the hearing could not properly be regarded as a bail hearing at all.

60. *Thus far, the Applicant’s argument resembles that pursued in several recent cases, including Ennis. The distinctive feature of the present case, however, is that there has been a subsequent bail determination. The Applicant had applied to the High Court for conventional bail, and this was refused by the High Court ... Crucially, the Applicant makes no complaint in relation to the procedural fairness of that bail hearing and determination.*

61. *The “looking through” exercise in the present case thus reveals two bail determinations, namely, those of the District Court and the High Court. Even if one assumes—without deciding—that the District Court hearing had been deficient, there has since been a judicial determination, reached following a bail hearing cognisable at law, that the Applicant should not be admitted to bail. It follows that the Applicant is being detained pursuant to a committal warrant which is valid on its face, and that he has had the benefit of a proper judicial determination, reached on constitutionally permissible grounds, that he should not be admitted to bail. The Applicant is being detained in accordance with law.*

Determination of the second preliminary issue

74. The second preliminary issue concerns the consequence of this court’s finding on the first preliminary issue, namely what flows from this court’s finding that the three High

Court orders were ones refusing conventional bail? In other words, how does the fact that conventional bail was refused by the High Court impact on the substantive Article 40.4.2° proceedings?

75. In answer to the second preliminary issue, where:-

- (a) a person (“*applicant*”) is refused bail in the District Court and is remanded in custody;
- (b) an Article 40.4.2° inquiry is opened in respect of the applicant’s detention (wherein it is alleged that they were deprived of a meaningful bail hearing in the District Court);
- (c) subsequently, the applicant is refused conventional High Court bail (and about which no complaint is made); and
- (d) subsequently again, the applicant is remanded in custody by the District Court; the applicant is detained in accordance with law.

(J) Conclusion

76. The applicants are detained in accordance with law. I refuse to direct release of any applicant. The matter will be listed before me on 6th October 2026 with a view to fixing a date for the hearing of any application for costs.

,

Appearances

Colman Fitzgerald SC, Philip Sheahan and Karl Monahan BL, instructed by Healy Law LLP, John M Quinn Solicitors and Tracey Horan Solicitors for the applicants.

Eoin Carolan SC and Davey Lawlor BL for the Minister and the Governor, instructed by the Chief State Solicitor’s Office

Sunniva McDonagh SC and Kieran Kelly BL for the Director of Public Prosecutions, instructed by the Chief Prosecution Solicitor