

Unofficial translation by The Van Leer Jerusalem Institute

Jerusalem Magistrate's Court

Case No. 45839-04-24: State of Israel vs. Nadra Kavorkian, April 19, 2024

Before the Honorable Judge Dov Poluk

Plaintiff: State of Israel

Defendant: Nadera Kevorkian, ID No _____

Present:

1. Representatives for the plaintiff: Chief Warrant Officer Daniel Nachum and Warrant Officer Avi Shabtai.
2. Attorneys for the respondent: Hasan Jabarin and Alaa Mahajna.
3. The defendant, represented by the IPS (Israel Prison Service).

Protocol:

The representative of the plaintiff, after being duly sworn in:

Repeats the request. Presents the investigation file. This is a first an extension of the respondent's detention. The respondent's is a professor at the Hebrew University of Jerusalem and at a university in London. The respondent is suspected of severe incitement against the State of Israel for statements made against Zionism and claims that Israel is currently committing genocide in Gaza. I request to bring before the court several quotes from a transcript of a podcast from late February - early March, which we received, including "a woman soldier shot a 14 years old child at point-blank range" and "they return the body dirty and horribly mutilated". The court sees all the quotes, I will not detail them now. We argue the respondent's dangerousness due to her influential statements, which have wide exposure both domestically and internationally, posing a danger as they might influence various citizens to commit crimes against the State of Israel. Additionally, during her arrest yesterday, a search of her home found posters and pictures depicting IDF soldiers as an occupying army. Refers to paragraph 3 in the confidential report. I can state on record that in several documents, a connection to an anti-Semitic, anti-Israeli organization was found.

Plaintiff responds to questions by respondent's attorney:

Q: You confirm that because we are discussing publishing offenses, you investigated the most recent publication from March 9th, correct?

A: Yes.

Q: Can you present to the court a single publication by her that you find problematic, published since March 9th?

A: Currently, we are here due to the podcast from March 9th. Part of our actions is to also investigate what she did after March 9th.

Q: I understand that the purpose of the arrest is to investigate further offenses?

A: No. The arrest is due to suspicion of incitement. From her statements, suspicion of incitement arises. It is about an international podcast.

Q: Regarding the posters, you also confirm that you found the posters in her study?

A: Yes.

Q: And not on the street, correct?

A: Correct.

Q: And she did not author them, correct?

A: Correct.

Q: You arrested her from 5:00 PM and did not see it appropriate to investigate her about the posters, whereas you justified the arrest in four sentences, all of which include a mention of posters. How is it that from 5pm to 12:00am she wasn't questioned about the posters at all.

A: We decide how to conduct the investigation and the fact that we didn't get to ask is because many questions arose.

Q: We are dealing with a publishing offense, and you presumably read the law, correct?

A: Correct.

Q: Regarding a publishing offense, it involves public dissemination. Can you explain how a poster in her room meets the definition of public dissemination? What is written on the posters that constitutes an offense?

A: There are posters written in Arabic and documents written in English. We have not yet received a transcription of the ones in Arabic. Regarding the documents in English, a suspicion related to the organization DCI was raised, as I mentioned, it is an anti-Israel organization, and a comprehensive examination of it has not yet been conducted.

Q: You are telling me that up to this moment you have nothing incriminating her because you are in a state of inquiry as of March 9th. You need to check the language, the translation.

A: There are documents that indeed, in some way, raise suspicion.

Q: What are they?

A: Presenting.

Q: I read the document. I do not see any reference to the posters in it. We are talking about six pages. From them, I see that the majority is interpretation, and regarding the texts attributed to her, I do not see any offense. Regarding the posters, I have not received the posters. You said there are documents in Arabic. Can I see them?

A: Currently, I only have a picture of them. I request not to display the pictures at this moment. To the court's question why we arrested her only now, we needed approval from the State Attorney. On April 17th, we received approval in the late evening hours. The next day an arrest warrant was issued, and yesterday she was arrested.

Q: You received approval from the State Attorney?

A: Yes.

Q: You are saying that because you received approval yesterday, you arrested her. Confirm to the court that the approval for the investigation is only for specific developments?

A: The approval covers both items in the arrest request.

Q: The court asked you a question which you did not answer. You were asked why you are arresting her and you said because you received approval for the investigation. There was no arrest warrant approved. Why did you arrest her? Why didn't you summon her by regular mail or email or phone?

A: I am not the one making decisions. A decision was made to arrest her, and so we did.

Q: Who made the decision?

A: I don't know.

Q: I claim that the Minister of National Security ordered her arrest.

A: We issued an arrest warrant on the 18th of the month.

Q: Who decided to submit a request to a judge to issue a judicial arrest warrant?

A: The investigative unit submitted a request to the court for an arrest warrant, which the court approved.

Q: Did you actually receive approval for the investigation?

A: We received approval, issued an arrest warrant, interrogated her, and here she is.

Q: When you submitted the request for arrest to this honorable court, did you mention to the court that you are investigating publications after March 9th? It's important to know if you presented a full evidential basis to the court or not.

A: I refer the court to the document in the file under section D, referred to as document marked H/1.

Q: Did you present to the court a check of the request for arrest at the Hebrew University which decided to return her to the university and close the case, because no offense was committed, did you present that?

A: It is before the court.

Q: You said she wrote something against Zionism?

A: Yes.

Q: Would you agree with me that there is no law in the State of Israel that forbids citizens from criticizing Zionism?

A: Maybe.

Q: What did you mean by what she said against Zionism, what are the anti-Zionist things?

A: I have many examples. As soon as she speaks against Zionism and then says that a woman-soldier shot a 14 years old child from the village ... about how Israel holds bodies full of blood... keeping them horribly mutilated. There are so many.

Q: What does Zionism have to do with this, it's against the army? Where is the Zionism? Confirm to me, please, that you asked her about the [statement about] the boy you attributed to her, and she answered and gave you a response?

A: Not yours.

Q: You confirm to me that also regarding the matter of Zionism, I will read to you the sentence that you see as unlawful: "The time has come to abolish Zionism, it's not that I..." Read it. Confirm to me that you asked her questions about this sentence and she answered you regarding it?

A: She was asked.

Q: Please explain to me why this sentence, which is the longest sentence you received approval to investigate, explain to me why, if she is released, the State would be in turmoil and there would be violence in Israel?

A: As I claimed, she poses danger, since she has influence and the things she says can be interpreted in one way or another, especially when she says the sentence you mentioned and she claims the... "the cruel acts of the cruel soldiers..." and she has a sentence about Zionism. You understand there's here...

Q: How is this long sentence harmful, what is the offense here?

A: When such statements are made in an international podcast that has many listeners, it can influence.

Q: Who is the public that would be influenced by it?

A: There's no shortage of people who understand English.

Q: Who is the public that would be influenced by it?

A: Various citizens.

Q: Referring to section 144d'2 of the Penal Code about an act of violence being an offense that endangers a person's life or causes serious injury. That's a violent act. You are accusing her of calling for a violent act, where is the violent act?

A: I said we are accusing her of the act of incitement.

Q: Act of incitement, but this is violence, this is the section, where? (raises his voice, and bangs on the desk). I apologize to the court. Where is the actual offense?

A: I've already told you and shown you.

Q: You confirm to me that you interrogated her about the articles she published?

A: She was asked about them.

Q: When you don't have approval to interrogate her about her the academic article she wrote and you interrogated her when you don't have the approval?

A: There is a specific question and general background questions.

Q: You didn't receive approval and you interrogated her?

A: She was asked in general.

Q: You interrogated her at great length about the topic of the bodies and their return in a damaged state, why did you interrogate her about this when you don't have approval.

A: Again, these are background questions.

Q: The respondent said you questioned her about the article for an hour?

A: She was asked about a concept in English.

Q: For an hour?

A: Absolutely not for an hour.

Q: In Israeli media and also in this summary document it is written, and there was a quotation she denied, and you in the open document also refer to it, the respondent says you did not ask her any questions on this topic?

A: As I said, the interrogation was stopped in the middle. I can quote for you, she was asked if she feels well... she said she does not feel well, and the interrogation was stopped.

Q: For six hours, you don't find it appropriate to interrogate her about the main issue?

A: As I said, and I am quoting, in interrogation line 377 a question from the interrogator because the late hour, "we have several topics to go through, can you continue the interrogation," "I am not capable," was her answer.

Q: Regarding the grounds of obstruction?

A: My claim is for dangerousness.

Q: You are claiming dangerousness and not obstruction?

A: I claimed dangerousness.

Plaintiff's Representative: Reiterates the request and asks for it to be granted.

Respondent's Attorney Concludes: Sir, first of all, I thank the prosecutor for being fair in providing answers, and also thank the court for trying to assist the parties. This is the first case in legal history involving Section 144d' of the Penal Code regarding public incitement and incitement to racism that is brought against an academic in order to extend her detention. To the best of my knowledge, this is the first time an academic in Israel is investigated by the police over academic articles published in the leading international journals, in English, articles that are studied by students at the Hebrew University and internationally for years. Israeli police have found it appropriate to investigate the academic for more than an hour about these articles. Not only this, but it is also the first time in 25 years that Israeli police stand before a court and presents, as one of the grounds for detention, that the defendant harshly criticizes Zionism, and it is also the first time we hear since the International Court's decision on the matter of genocide that Israeli police argue before the court that criticism on the matter of genocide is grounds for arrest.

This is also the first time that the police are justifying the arrest with arguments that pertain to the factual description of the issue of returning bodies to their families, whereas what the respondent mentioned is brought almost daily in front of the Supreme Court. I declare before the court that I will soon have a discussion on this topic, and one of my main arguments is that not returning a body in due time results means the return of a decayed body to the family. These are the grounds for arrest, these are the justifications for the arrest by the Israeli police. The Israeli police, in their fairness, note that they are not raising the issue of obstructing legal proceedings, but rather of dangerousness. I need to say a couple of things about this topic.

The first thing is that the publication was on March 9, and nothing was presented before the court that indicates that the publication from March 9 led to a deterioration in the matter of violence and as a result of it. Also, nothing substantial was presented before the court that shows there were publications after March 9. Regarding the publication of March 9, there was an international and local discussion. A local public discussion, academic and non-academic, and an international discussion, about the podcast she participated in. Presumably if this publication was dangerous and led to the deterioration of the situation, the Israeli police would have arrested her

immediately upon her return to the country on March 15, 2024, and this was not done. The police provide illegal justifications, stating although we have nothing new, we are looking for new things, meaning the Israeli police admit today that they have nothing that indicates dangerousness, but they want to use the investigative process to build a case and see if there is one. There is no legal grounds for arrest according to which, we have no evidence against someone, but I want to arrest that person to check. There is nothing dangerous but it might be found. Therefore, the justifications brought by police are very problematic and indicate an illegal request for an extension of an illegal detention. I point out that this detention is illegal because they could have been satisfied with a summon, and they did not, and after receiving a judicial arrest warrant, when she answered the questions she was asked to answer, she should have been released. The investigation exceeded the approval it received by the Attorney General through the State Attorney. The police received approval for an investigation regarding very short sentences, out of which, it turns out, some were not investigated, and for others an answer was given. But there was an expansion of the interrogation which indicates that the investigation was political. Regarding the podcast in question, I request to present to the court a document signed by representatives who do not agree with the opinions and validity of the things said, and most of them, many of them law professors teaching at the Hebrew University and also some at Tel Aviv University, all confirm and note that what she said does not constitute an offense. This document is a document signed by academics that listened in depth to the podcast and also legal experts on relevant matters, to the police request, and they determine a decisive opinion that there is no criminal offense in the things said. The document indicates that we are dealing with the topic of freedom of expression, and freedom of expression must also protect the harshest expressions, otherwise it is meaningless, and indeed the expressions of the respondent are very harsh, and therefore there is no justification for the punishment. Today I also request to submit to the honorable court a position that was published publicly and it is very important, her position that was published by her, explaining her remarks in the podcast in Arabic, is very important, since it says, yes, I am referring to the army but I am not ... quoting, "I am against harming Palestinian and Jewish civilians, I am against harming Palestinian and Jewish children."

It is also important to present to the court, the response of the university that came out today criticizing the Israeli police and calling for her immediate release. I have another document issued by 150 professors from the Hebrew University stating that what she said does not constitute an offense, and we are against her detention which is an infringement of academic freedom that we found today. Every professor who wrote an article has to know that they cannot be interrogated about it years later. I request to present a ruling to the court that was given after October 7th in case 789/24, and it criticizes the implications, and says that criticism of the military falls within freedom of expression and is very legitimate.

Here I present to the court district court rulings from the Jerusalem Magistrate's Court and others from the Nazareth District Court, all showing that there is no justification for the arrest. Exactly the question of what happened from March 9th to today, the ruling says you carried out an arrest after an extended period of two weeks afterward, when you should have been satisfied with an alternative to detention.

Regarding the podcast we said there is no... regarding the material that [the police] searched for, not a thing or half a thing was found. The approval reiterates the point that we are dealing with a publishing offense attributed to the respondent. However, no matter the content of the posters, there cannot be a publication offense associated with them [since they were not published by her]. The request here is publication of [incitement]to violence and publication of incitement to racism. The need is to punish the publisher. She is not the publisher of the posters that we did not find who they belong to. I asked the respondent, and she said they found them on her work desk. She wrote about them, that is it. If sir would look at section 144d' of the Penal Code, he will find one of the exemptions for committing the offense is if the person wrote what they wrote as part of a report or as part of an overall account including an academic report. Therefore, if the things fall within the academic sphere, it is forbidden by the law to investigate her. Not only was approval not received from the Attorney General, section 144 says it is forbidden to investigate her and it is forbidden to bring her to court. Therefore, it is an illegal detention, so at least now, after the investigation on the matter they wanted to investigate is over, we request her immediate release and it is clear the court can consider an alternative to detention.

Decision

Request to extend the arrest is put before the court.

This is a first request, while the respondent was in custody since yesterday in the afternoon.

The plaintiff requests to extend her detention by seven more days.

Judge's Remarks:

Upon reviewing the investigation materials presented before me, it appears that the case concerns remarks made by the respondent during a podcast on March 8, 2024. After reviewing the material, it appears that there are a few statements that may cross the line of freedom of expression into incitement.

It has been more than a month since the podcast, and it is unclear why no actions were taken against the respondent earlier if the plaintiff believed she posed a danger.

Following the arrest of the respondent, a search was held in her home, and no real evidence was found to bolster the claim of her dangerousness or to suggest additional offenses.

Given these circumstances, I am not convinced of the need to extend the respondent's detention and hereby order her release under the following restrictive conditions:

1. Personal bail in the amount of 10,000 NIS.
2. Third-party guarantee also in the amount of 10,000 NIS.

3. The respondent must appear for investigations or any court hearings.

This decision can be appealed as per the law.

This decision was given and notified on the 11th of Nissan 5784 (April 19, 2024), in the presence of all parties involved.

Judge:

Dov Poluk

Respondent: I understand the meaning of personal bail; if I violate the release conditions, I might have to pay the bail amount.

Ms. Shalhoub Ovad Yasmin, ID No. _____, after being legally warned: I understand the meaning of third-party bail; if the respondent violates the release conditions, I might have to pay the bail amount for the respondent.

Plaintiff's representative: We request a stay of execution. We will notify if we intend to appeal by 14:00.

Respondent's attorney: I oppose the extension of the detention and the delay. Even for half an hour. The reason is that the mere submission of a request for a stay should be in a manner... noting that the delay the plaintiff requests is not for obstructing legal proceedings but for dangerousness. If there was an obstruction of legal proceedings, it would suffice for her release so that she cannot obstruct and disrupt. If we are talking about the grounds of dangerousness, the type of these offenses under the criminal procedure law, detentions are not falling from statutory dangerousness again that the plaintiff, Israeli Police, did not specify what danger she poses if released immediately, therefore we oppose the automatic acceptance of a stay and the extension of the detention when the request was not justified.

Decision:

I have noted the commitments of the respondent and the guarantor.

Stay of execution until April 21, 2024, at 11:00.

The plaintiff shall inform the court and the respondent's attorney by 14:00 if a decision has been made to appeal. If an appeal is decided upon, it will be submitted today by 15:30.

The protocol of the discussion constitutes an arrest warrant as far as a decision on the appeal is made.

For the sake of clarity, the respondent complied with the release conditions.

Issued and notified today, the 11th of Nissan 5784, April 19, 2024, in the presence of attendees.

Dov Polouk