



Neutral Citation Number: [2026] EWHC 716 (Admin)

Case No: AC-2021-LON-000845

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/03/2026

Before:

LORD JUSTICE STUART-SMITH
MR JUSTICE JAY

Between:

NIRAV DEEPAK MODI

Applicant

- and -

GOVERNMENT OF INDIA

Respondent

Edward Fitzgerald KC and Graeme L. Hall (instructed by **Boutique Law LLP**) for the
Applicant
Helen Malcolm KC and Nicholas Hearn (instructed by **The Crown Prosecution Service**) for
the **Respondent**

Hearing date: 17 March 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 25 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE JAY

LORD JUSTICE STUART-SMITH and MR JUSTICE JAY:

1. This is the judgment of the Court.

Introduction

2. The extradition of the applicant, Mr Nirav Modi, is sought by the Government of India (“the GoI”) pursuant to extradition requests dated 27 July 2018 and 11 February 2020. The first of these requests relates to two sets of criminal proceedings brought by the Central Bureau of Investigation (“the CBI”) and by the Enforcement Directorate (“the ED”). In short, the first set of proceedings relates to an alleged fraud on the Punjab National Bank which caused losses equivalent to over £700 million; the second relates to the alleged laundering of the proceedings of that fraud. The second extradition request relates to a third set of criminal proceedings involving alleged interference with evidence and witnesses in the CBI proceedings. Mr Modi was arrested in this jurisdiction on 19 March 2019 and has been held in custody at HMP Wandsworth since 20 March 2019.
3. The extradition hearing took place over two weeks in May and September 2020 before District Judge Goozée sitting at Westminster Magistrates Court with closing submissions in January 2021. On 25 February 2021 the District Judge handed down his decision. He found that there were no bars to extradition and the case was sent to the Secretary of State. On 15 April 2021 she ordered Mr Modi’s extradition to India, and he then appealed to this Court.
4. On 11 and 12 October 2022 we heard Mr Modi’s appeal on two grounds, viz. that the lower court was wrong to decide: (1) that his extradition to India would be compatible with his Convention rights under Article 3, and (2) that it would not be unjust or oppressive within the meaning of section 91 of the Extradition Act 2003 (“the 2003 Act”) to extradite him by virtue of his physical or mental condition.
5. In a judgment handed down on 9 November 2022 ([2022] EWHC 2829 (Admin)) we dismissed Mr Modi’s appeal. In the course of that judgment we considered four assurances from the GoI’s Ministry of Home Affairs which were in broad outline to the effect that Mr Modi would be held at Barrack No 12, Arthur Road Jail in Mumbai and that he would receive “any relevant and necessary” medical treatment from a private doctor or mental health expert of his choice.
6. Permission to appeal to the Supreme Court was subsequently refused. Thereafter, a legal bar operated to prevent Mr Modi’s extradition to India. That bar is confidential to him and we have not been told what it was. However, that bar ceased to apply on 13 August 2025.
7. By an Application Notice dated 18 August 2025 Mr Modi applied under CrimPR 50.27 and Crim PD 12.5.15 to re-open his extradition appeal. The basis of the application is that the judgment of this Court in *Bhandari v Government of India* [2025] EWHC 449 (Admin) (“*Bhandari*”), delivered on 28 February 2025, demonstrates that the use of torture and ill-treatment by investigative authorities in India “is commonplace and endemic”, and that there is an unacceptable risk in this regard because Mr Modi would likely be detained by a number of investigative authorities for interrogation were he to be extradited. The scope of the application to

re-open has broadened somewhat since August last year to include the contention that later assurances given by or on behalf of the GoI are insufficient in nature and quality to alleviate that risk to a point below the Article 3 threshold.

8. We have case-managed Mr Modi's application to re-open from the outset. On 8 October 2025 we made an order adjourning the application to an oral hearing with a time estimate of 1½ days, and we set a timetable for the lodging of bundles and skeleton arguments. The hearing was listed on 16 December 2025 but had to be adjourned on that occasion in order to enable Mr Modi to address further written assurances provided by the GoI in early December. On that occasion we ordered that the parties complete a template "Issues Schedule" which would permit us better to focus on what was in dispute, on the basis of what Mr Modi submitted were the present inadequacies in the GoI's case and the latter's headline responses. We also set a timetable for further evidence and submissions. Finally, we ordered that the hearing to be fixed as soon as possible after the end of February 2026 would be a "rolled-up" hearing of the application for permission to re-open and, if permission were granted, the substantive appeal.
9. Some of the evidence and submissions filed by Mr Modi requires, in light of paragraph 5 of our Order dated 16 December 2025, our permission. In the circumstances, we grant permission for Mr Modi to rely on the fourth and fifth witness statements of Mr Ashul Agarwal dated 22 January and 26 February 2026, the witness statement of Mr Ritesh Shah dated 20 January 2026, as well as further written submissions dated 16 March 2026.

The Legal Framework

10. Part 50.27 of the Criminal Procedure Rules 2025 provides:

"50.27.—(1) This rule applies where a party wants the High Court to reopen a decision of that court which determines an appeal or an application for permission to appeal.

(2) Such a party must—

(a) apply in writing for permission to reopen that decision, as soon as practicable after becoming aware of the grounds for doing so; and

(b) serve the application on the High Court officer and every other party.

(3) The application must—

(a) specify the decision which the applicant wants the court to reopen; and

(b) give reasons why—

(i) it is necessary for the court to reopen that decision in order to avoid real injustice,

(ii) the circumstances are exceptional and make it appropriate to reopen the decision, and

(iii) there is no alternative effective remedy.

(4) The court must not give permission to reopen a decision unless each other party has had an opportunity to make representations.”

11. In *McIntyre v Government of the United States* [2014] EWHC 1886 (Admin); [2015] 1 WLR 507, this Court (Lord Thomas CJ and Cranston J) set out at para 11 the principles which govern an application to re-open made under what is now CrimPR 50.27. This Court emphasised the importance of finality in extradition appeals. That having been said:

“11(iv) Exceptionally events can occur after the decision on the extradition hearing (if there is no appeal) or of the Divisional Court or of the Supreme Court (on any appeal) which would make extradition incompatible with the requested person’s human rights.

...

(vi) The provisions ... are therefore intended to permit the determination of such issues by the courts by way of an appeal. The express language of the new provisions makes it clear a court can only consider such an appeal if it is both necessary to avoid a real injustice and the circumstances are exceptional and make it appropriate to consider the appeal.”

12. In *United States v Bowen* [2015] EWHC 1873 (Admin) this Court (Burnett LJ and Thirlwall J, as they both then were) drew:

“9. ... particular attention to the expectation that the jurisdiction under Crim PR 17.27 will not be exercised unless something has developed after the determination of the appeal. The jurisdiction is not designed to allow a disappointed party to the appeal to reconsider his arguments, material and evidence and come back to the court to have another go. Furthermore, we would emphasise the importance of finality in extradition cases by noting the observations of Lord Thomas in *Abu Hamza v Government of the United States of America* [2012] EWHC 2736 (Admin) at [21] and [22], namely that there is an overwhelming public interest in both the proper functioning of extradition arrangements and in honouring extradition treaties as well as there being an equally high importance in the finality of litigation. Finality of litigation is particularly important in extradition cases:

“because of the public interest in an efficient process, the need to adhere to international obligations and to avoid a recurrence

of the delays which have so disfigured the extradition process in the past and to which successive appeals over time can subject it.””

13. Mr Edward Fitzgerald KC for Mr Modi submitted that it is necessary to re-open his appeal against extradition to avoid the real risk, which has only come to light since the conclusion of his extradition appeal before us, that if he is returned to India he will be interrogated and be subject to torture and ill-treatment. If those matters are established, then – subject to the requirement that this application must have been brought as soon as practicable - Mr Fitzgerald contended that the circumstances of the present case are exceptional and that this appeal should be reconsidered on fresh evidence in order to avoid a real injustice.

As Soon as Practicable

14. Dr Sharon Persaud, a partner at Boutique Law LLP, has filed a witness statement in support of this application.
15. As we have said, the basis of the application to re-open is the publication of the decision of this Court in *Bhandari*, which decision became final in April 2025. Boutique Law LLP did not act for Mr Bhandari but Mr Fitzgerald led the counsel team. Mr Modi applied for bail on 15 May 2025 and Mr Fitzgerald was re-instructed in connection with that application. He drew attention to the significance of *Bhandari* and Fordham J, as the judge seized of the bail application, raised the possibility of re-opening our decision. Given that the GoI’s response to that indication was that Mr Modi would not be interviewed in India if extradited, Dr Persaud informs us that she then initiated enquiries with various lawyers in India “to try to establish the factual position in relation to the outstanding investigations/case Mr Modi faced in India, as well as other factual developments, such as the progress of the proceedings to date”.
16. There was some delay in finding a lawyer who might assist, but on 10 June Dr Persaud had her first call with Mr Agarwal, an advocate who had represented Mr Modi in relation to these matters in 2018-19. He was working around his other court commitments, and for that reason and, we infer, others it then took time to collate all relevant material from various courts and agencies. Mr Agarwal provided a statement on 25 July, and on 26 July formal instructions were sent to Justice Verma to provide an expert report (there had been a preliminary video-call with him earlier in July).
17. According to para 13 of Dr Persaud’s statement:

“Late on 13 August 2025, we became aware of developments in other proceedings, which made it essential to lodge the application to re-open even without an expert report. We expect the expert report in the course of the next two to three weeks, and are doing all we can to expedite matters ...”
18. Ms Helen Malcolm KC for the GoI submitted in writing that it is clear from the foregoing sequence of events that this application was not brought as soon as practicable after *Bhandari* was published in late February 2025. In oral argument Ms Malcolm did not resile from those submissions although, very fairly, she did not press the matter, leaving it to us to decide it.

19. It might be said that Dr Persaud should have known about *Bhandari* before it was brought to her attention in May 2025, but we understand the pressures operating on busy practitioners. It could also be said that Mr Agarwal did not act quite as fast as he might have done, but those representing Mr Modi in this jurisdiction were not responsible for that and this was not Mr Agarwal's only case. Finally, it may not be irrelevant that Dr Persaud felt compelled to bring this application, albeit incomplete at that stage, owing to the developments in the other proceedings she refers to. It is unclear why she waited for those developments to come about.
20. Overall, however, and taking all relevant circumstances into account, we are persuaded by Mr Fitzgerald that this application was brought as soon as practicable for the purposes of CrimPR Part 50.27(2)(a).

Bhandari

21. In *Bhandari* this Court addressed the risk of Mr Bhandari, who was sought by the GoI for alleged offences of money-laundering and tax evasion, facing inhuman or degrading treatment or torture arising from interrogation in custody, whether at the hands of the police or other investigative bodies. Following a comprehensive review of an extensive corpus of evidence, some of which predated our decision in Mr Modi's case given in November 2022, this Court concluded as follows:

“133. ... The extensive evidence which persuaded the District Judge that there were strong grounds to believe that the appellant would face a real risk of proscribed treatment at the hands of the several bodies engaged in investigating him, did not focus or depend on the *location* at which such questioning occurs.

134. The evidence is that the use of proscribed treatment to obtain confessions is commonplace and endemic. The evidence indicates that the focus on obtaining confessions flows from being under-resourced, lacking modern investigation techniques or sufficient personnel; and from the lack of will to stamp out the use of torture, reflected in the failure to ratify UNCAT. Those factors would be unaffected by whether investigating bodies have the opportunity to question the appellant in their own detention facilities or can only do so at Tihar prison. In addition, there is some (albeit more limited) evidence of the use of violence by investigation officers, against those under investigation, to extort money. The latter motive would be unaffected by the location of questioning, and the appellant is likely to be at increased risk of extortion because he is, or would be perceived to be, a wealthy man.

135. The assurance regarding the appellant's location would only remove the established real risk of proscribed treatment, or lessen it to such an extent that it does not meet the threshold, if those involved in investigating the appellant would be inhibited by the location from acting in the way that the District Judge found there is otherwise a real risk they would do. In

determining this question we have taken into account all the evidence we have received regarding Tihar Prison, including that which we have addressed above and below (some of which has only come into existence since the District Judge gave judgment).”

22. In October 2022 the GoI had given an assurance in Mr Bhandari’s case “on the basis of assurance provided by the investigation agency [sic]”, that if he were refused bail he would not be removed from prison unless he were subsequently granted bail, required medical treatment in a hospital, or for the purpose of a court appearance.
23. Mr Fitzgerald, acting for Mr Bhandari, submitted in that case that the assurance was impermissibly vague because “the investigation agency” was not identified (and in that case, as here, there was more than one agency interested in the requested person), and it was inadequate inasmuch as the evidence demonstrated that the risk of proscribed treatment did not focus or depend on the location at which questioning occurs. This Court rejected the first of these submissions (at para 132) but accepted the second (at para 133). The way in which it addressed the first of Mr Fitzgerald’s submissions is pertinent to one of the arguments he raised before us:

“132. We agree with the respondent that, insofar as the challenge to the adequacy of the October 2022 Assurance is based on the reference to an assurance provided “*by the investigation agency*”, it is without merit. First, as the District Judge rightly observed, applying *Giese v USA* [2018] EWHC 1480 (Admin), [2018] 4 WLR 103, Lord Burnett CJ (giving the judgment of the court), [38], the court should not view the respondent’s assurances “*through the lens of a technical analysis of the words used*” or approach them with suspicion that the government “*will do everything possible to wriggle out of them*”. Secondly, and in any event, it is of no consequence which agency provided an assurance *to* the respondent, or whether the respondent sought an equivalent assurance from each agency that may wish to question the appellant. The assurance that matters is the one provided by the respondent to His Majesty’s Government, and there is no carve out within that assurance which would enable, say, the CBI or the Income Tax Department to remove the appellant from prison for questioning.”

Notably, the assurance was not considered to be inadequate because it failed to specify which agency or agencies had an interest in Mr Bhandari, or because the GoI had failed to disclose the individual assurance or assurances that had been given.

24. Mr Fitzgerald submitted that there are clear parallels between *Bhandari* and the instant case, including this Court’s observation that Mr Bhandari “is, or would be perceived to be, a wealthy man”. We agree that these parallels exist for present purposes to the extent that the GoI has not sought to defend this application to re-open on the basis that the systemic failings identified in *Bhandari* have since been addressed and resolved. Indeed, Mr Fitzgerald has drawn our attention to later evidence which suggests that this is far from the case. We therefore proceed on the

premise that, absent an adequate and reliable assurance given by the GoI, Mr Modi's application to re-open would have considerable force. The essential question for our resolution is whether such an assurance (or assurances) have been given, but for the avoidance of doubt we should also state that we cannot accept Mr Fitzgerald's argument that Mr Bhandari occupies as high a profile in India as does Mr Modi. The evidence considered by the District Judge in the instant case does not support that contention, and we should reiterate what we said at para 68 of our November 2022 judgment that "if anything, the imperative for the GoI to comply with its assurances will be enhanced by the fact that this is a high-profile case so that its conduct and care for Mr Modi is likely to be subject to heightened scrutiny at all times".

The Assurances

25. By an undated document described as "Response of Indian Authorities to UKCPS request dated 10 September 2025", the GoI's Ministry of External Affairs CPV Division confirmed that in its view (1) neither the CBI nor the ED is empowered under Indian law to interrogate Mr Modi after he is extradited in connection with the offences for which he is being extradited, and (2) in any event, there is no intention or need to interrogate Mr Modi because these cases are ready to proceed to trial. Further, under Annexure A:

"1.6 Without prejudice to the above, all the five investigating agencies of India including CBI have confirmed in writing that his custodial interrogation is not required by them and even if it is required at any stage in the future, the same will not be done without taking prior consent [of the UK]"

26. We accept Ms Malcolm's submission that this document does not contain assurances as such. It was prepared at short notice in response to the application to re-open which on Ms Malcolm's understanding this Court might determine on the papers. There is a lively dispute between the parties as to whether the assertion that neither the CBI nor the ED has power to interrogate Mr Modi after his extradition is correct as a matter of Indian law. In our view, we need not resolve that dispute although we do not doubt that the GoI believes in good faith that no such power exists.

27. On 2 December 2025 Mr Rakesh Pandey, Joint Secretary of the Ministry of Home Affairs of the GoI, gave the following undertaking to His Majesty's Government:

"In continuation of the [previous] assurances, the Ministry of Home Affairs, Government of India further assures that:

- a. The extradition of Mr Nirav Modi is sought only for the judicial trial in India for the above-mentioned cases [as specified in our para 2 above] of CBI and ED in India.
- b. Following his extradition to India, Mr Modi **will not** be interrogated by the CBI in relation to the matters for which extradition is sought or in relation to any other allegations or proceedings. In future, if any need arises for his interrogation in relation to the other ongoing cases by the CBI, the same will be done only with prior recourse to the

UK Courts/authorities for permission as per the conditions laid down by the UK Courts/authorities.

- c. Mr Modi **will not** be interrogated by the ED in relation to the matters for which extradition has been sought or in relation to any other allegations or proceedings. In future, if any need arises for his interrogation in relation to the other ongoing cases by the ED, the same will be done only with prior recourse to the UK Courts/authorities and as per the conditions laid down by the UK Courts/authorities.
 - d. Mr Modi will not be interrogated by any other investigating agency (including the SFIO [Serious Fraud Investigating Office], DRI [Directorate of Revenue Intelligence] and CBDT [Central Board of Direct Taxes]) in relation to any ongoing allegation or proceeding. In future, if any need arises for his interrogation in relation to any other proceeding or allegation, the same will be done only with prior recourse to the UK Courts/authorities for permission and as per conditions laid down by the UK Courts/authorities.
 - e. In accordance with the Rule of Specialty, Mr Nirav Modi will not be subjected to any trial concerning offences beyond the scope of the extradition offences without taking consent of the Government of the UK. Even after such a consent is granted, Government of India will not transfer him from the Arthur Road Prison to any other prison in India. There are fully functional video conferencing facilities available in Arthur Road Prison through which Mr Modi can be produced before any outstation Court in India.”
28. On 9 December 2025 Mr Amit Kadam, Superintendent of Police and Head of Branch of the CBI, Mumbai, provided an affidavit confirming that in relation to the proceedings brought against Mr Modi by the CBI the trial court was now seized of the matter and the investigating agency had no further role to play. In relation to the pending arrest warrants in the DRI case, Mr Kadam’s belief is that under Indian law once the trial court in Mumbai is formally seized of the matters which form the extradition request, there is no formal process which would enable Mr Modi to be brought before another court.
 29. On 9 December 2025 Mr Suryakant Swarnkar, Assistant Director of the Mumbai Zonal Office of the ED provided an affidavit in similar terms to Mr Kadam’s.
 30. On 12 February 2026 the Indian High Commission sent a *note verbale* to His Majesty’s Government under cover of which was a statement of the same date from Mr Nishtha Tiwari, Joint Secretary of the Ministry of Home Affairs of the GoI. Mr Tiwari’s letter confirmed that all matters relating to extradition are within the exclusive powers of the Central Government of India. Further:

“4. In accordance with the above mandate, the GoI follows an established procedure whereby the Ministry of Home Affairs seeks inputs and confirmations from the concerned law enforcement agencies/authorities on extradition matters. These inputs are examined in detail, keeping in view the provisions of the Constitution of India as well as the applicable domestic legislation. Upon due examination and satisfaction, sovereign assurances, as required under the applicable extradition framework, are conveyed to the requesting foreign country. The assurances provided by the GoI are fully aligned with and derive authority from the Constitutional and statutory safeguards enshrined in Indian law.

5. In the re-opening proceedings filed by Nirav Modi, the Government of India's assurance dated 02.12.2025 has been submitted to the UK authorities after following the above-mentioned procedure. The necessary inputs and confirmations from the five investigating agencies namely Central Bureau of Investigation (CBI), Enforcement Directorate (ED), Department of Revenue Intelligence (DRI), Central Board of Direct Taxes (CBDT-IT) and the Serious Fraud Investigation Office (SFIO), have been obtained by the Central Government. These inputs and confirmations of the law enforcement agencies/authorities form part of internal correspondence of Government of India.

6. The assurances provided by the Government of India are binding and will be scrupulously adhered to by all the law enforcement agencies/authorities in India. Further, the assurances are also enforceable including through courts in India.”

Mr Modi's Case to Re-Open

31. Mr Modi's case is fully set out and developed in three skeleton arguments (the first prepared for the abortive December 2025 hearing, and the second and third for this hearing) and his contributions to the Schedule of Issues template which highlights the key references in the evidence. His case is supported by five expert reports from Mr Agarwal (a practising advocate in various Indian courts, including the Bombay High Court and trial courts in Mumbai) and four from Justice Verma (a retired Justice of the Supreme Court of India). We have studied this evidence and these submissions very carefully, taking into account the cogent and helpful submissions of Mr Fitzgerald and Mr Graeme Hall (who presented oral arguments on one issue). We do not think it necessary to set out the whole of Mr Modi's case in this judgment. We will focus on the key matters.
32. Mr Fitzgerald advanced what he called a number of overarching submissions. In the context of the first issue in the Schedule of Issues and more generally, he contended that torture and ill-treatment by investigating agencies in India remain endemic and commonplace because the situation has not improved since *Bhandari* was published in February 2025. He invited us to bear in mind that the assurances emanate from

those who engage in or tolerate torture and ill-treatment, with the consequence that the assurances are unreliable and cannot be trusted. He observed that Mr Modi is a particularly “big scalp” for the GoI. In similar vein, Mr Fitzgerald invited us to prefer the expert legal opinions of Mr Agarwal and Justice Verma, not least because Mr Kadam as a police officer is not qualified to opine on the law and is in any event not disinterested. It follows that the risk of further questioning by all five of the relevant investigating agencies remains. Further, there is no effective monitoring system in place in India and the assurances are not in reality enforceable because, whatever the GoI’s current intentions, “it will be practically infeasible to ensure that the disparate assurances are honoured across a vast array of State bodies, and for a period of years, if not decades”.

33. Mr Fitzgerald further submitted that the GoI has shifted its case, and is no longer seeking to contend that there is simply no power to interrogate Mr Modi in India. Moreover, the assertion that Mr Modi does not need to be interrogated is unreal, not least because the cases brought by the DRI, the SFIO and the CBDT remain extant and have not been discontinued. Mr Fitzgerald relied on the fact that other extraditees have been interrogated following extradition, including Mr Christian Michel whose case was specifically addressed by this Court in *Bhandari*. He submitted on the back of Mr Modi’s expert evidence that the investigating agencies are independent of the GoI, that the assurances are not binding on them, and that the latter cannot instruct them what to do or not to do.
34. Turning to the second issue (viz.: the possibility of further questioning is allowed for), Mr Fitzgerald advanced a number of points. He submitted that the assurances contain an express carve-out pursuant to which further interrogation could take place if permitted by the courts or authorities in the UK. Mr Fitzgerald sought to attack this in a number of ways. He contended that this was a meaningless promise because the courts in this jurisdiction could not give permission under section 129 of the 2003 Act, which applies only to the trial process and not to any antecedent interrogation. He argued that once this state of affairs was appreciated by the GoI, it would seek to argue that there has been a change in circumstances enabling it to say that the assurance is no longer binding. In any event, there is no remedy in the event of breach either in the UK or in India. In that regard, Mr Fitzgerald relied on the decision of the Supreme Court of India in *Abu Salem Ansari v State of Maharashtra* (2022 SCC OnLine SC 852) as well as Justice Verma’s evidence in these terms:

“Indian law and specifically the applicable extradition framework, in the present case provides no mechanism for Indian authorities or courts to cede control of or seek guidance from a foreign court in the conduct of domestic criminal investigations after an accused is extradited.” (see para 3.27 of his report dated 16 January 2026)

Justice Verma adds:

“... in my opinion the authority of the UK courts ends at the point of ordering or approving extradition and once extradition is complete, the matters fall within the sole jurisdiction of the Indian authorities” (para 3.33)

Overall, in his view:

“... the assurance in Mr Modi’s case, therefore, appears to be a diplomatic promise rather than a legally enforceable formal assurance in India.”

35. As for the third issue (viz.: the doctrine of specialty would not protect from further questioning by the CBI and the ED), Mr Modi’s short point is that the questioning of a subject is not covered by section 21 of the Indian Extradition Act. That provision covers the trial of an extradited person and not his interrogation. Although the Extradition Treaty between the UK and India uses the terminology of “dealt with” (the same language as in section 129 of the 2003 Act) which Justice Verma considers is arguably wider than “tried”, he points out that there is Indian Supreme Court authority in support of the proposition that any inconsistency between the wording of a Treaty and an Indian statute is resolved in favour of the latter.
36. As for the fourth issue (viz.: the undertaking as to location in Arthur Road prison), Mr Fitzgerald submitted that this is expressly addressed in the final sentence of para 134 of this Court’s judgment in *Bhandari* (see para 22 above). Further, and as Justice Verma points out, it is for the Indian Court to decide whether Mr Modi is produced at Court for trial, which would necessitate removal from Arthur Road.
37. The fifth issue (viz.: the unfeasibility of continuous detention at Arthur Road) is closely connected to the fourth. It is common ground that Mr Modi will need to be physically produced to the Mumbai court at the start of proceedings there for the purpose of formally framing charges. Furthermore, Mr Fitzgerald submitted that Mr Modi is entitled to be physically present at his trial, and in any case the evidence demonstrates the inadequacy of the video conferencing facilities at Arthur Road prison.
38. The sixth, seventh and eighth issues may be taken together. To some extent they overlap with earlier issues. These issues relate to the risk of questioning by other bodies, namely the SFIO, the DRI and the CBDT. Mr Fitzgerald submitted, in reliance on Mr Agarwal’s evidence in particular, that the assurances are defective because the GoI cannot bind these agencies and nothing in writing from them has been provided in evidence, in breach of the GoI’s overall duty of candour.
39. Mr Modi’s case on the ninth issue (viz.: the continuing risk of transfer to the Gujarat Court) was ably developed in oral argument by Mr Hall. A production warrant has been issued by the Court in Surat, Gujarat State on the application of the DRI. According to its terms, it requires the physical presence of Mr Modi, and that would entail a 293km journey from Mumbai across State boundaries. Mr Agarwal and Justice Verma have given clear and convincing evidence to that effect, on the basis of which Mr Hall submitted that there is a strong likelihood that Mr Modi will be detained and, thereafter, interrogated. Mr Hall invited us to reject Mr Kadam’s evidence, contradicted as it was by Justice Verma in particular, that the provisions of sections 267-269 of the Criminal Procedure Code do not operate so as to empower the prison authorities in Arthur Road, Mumbai to ignore a valid production warrant issued by a court in another State. Mr Hall also invited us to reject the contention that assurances given by the GoI could have any impact on warrants issued by the judicial arm of Government.

40. Mr Hall encapsulated Mr Modi's case on the ninth issue in five propositions. The first is that the warrant remains in force and has not been rescinded in circumstances where it could and should have been. The second is that Mr Modi's arrest and production is required under the warrant. The third is that the legal effect of the warrant cannot be overborne by these assurances. The fourth is that Justice Verma and Mr Agarwal have given clear evidence to the effect that, once in Gujarat, there is a high likelihood of interrogation by the DRI. The fifth proposition is that, if interrogated, there is a real risk of torture or ill-treatment.
41. The tenth issue is whether the grant of bail would expose Mr Modi to the risk of interrogation on other matters by the DRI, the SFIO and/or the CBDT. If, *ex hypothesi*, Mr Modi is no longer held in custody, any physical and legal impediments militating against the involvement of these other agencies disappear.
42. The eleventh issue (*viz.*: an alleged history of unreliable assertions) has already been addressed. The twelfth issue (*viz.*: whether the doctrine of speciality will prevent Mr Modi's trial for matters in which the reverse burden of proof obtains) is, we think, something of a makeweight. The GoI points out that Mr Modi's extradition is not being sought for offences under the Black Money Act where a reverse burden of proof applies, and Ms Malcolm submitted, correctly in our opinion, that the Secretary of State for the Home Department would not give her consent under section 129 of the 2003 Act to Mr Modi being tried on a charge which imposed such a reverse burden.

The Response of the GoI

43. Ms Malcolm submitted that there are two essential questions to be determined. The first is whether there are any grounds for concern that the assurances were not given in good faith and/or are unreliable. The second question is whether there are any residual grounds for concern that the assurances do not sufficiently protect Mr Modi. On the first issue, Ms Malcolm submitted that if we should be satisfied as to the good faith of the GoI, in the sense that the assurances have been given with every intention that they be binding, how they are executed is for the GoI and not this Court.
44. Ms Malcolm invited us not to succumb to Mr Fitzgerald's overly textual approach. She submitted that this case has, as she put it, been bedevilled by repeated attempts to find a chink that can then be scratched in order to locate a loophole.
45. Ms Malcolm accepted that Mr Kadam lacks legal qualifications although his evidence is relevant to Indian practice and to the GoI's state of mind. She raised some question-marks over the experience of Mr Agarwal and the expertise of Justice Verma which in the circumstances we do not consider that we need address.
46. Turning to the Schedule of Issues, Ms Malcolm's headline submission was that the GoI has given a categorical assurance that Mr Modi will not be interrogated. In relation to the matters which form the subject of the extradition request, the investigation stage is concluded and the "inquiry stage" contemplated by or under the Indian criminal justice system is now in the hands of the judicial authorities. Ms Malcolm observed that Justice Verma has conceded this point. Further, although the investigating agencies are independent entities they are still part of the executive branch of government. Ms Malcolm accepted that there was an issue as to the exact scope of section 21 of the Indian Extradition Act although she drew attention to

authority which indicated that that provision precluded even the issue of an arrest warrant: her submission was that the prohibition of interrogation is *a fortiori*. Her principal argument on the issue of specialty was that it is clear from the affidavit evidence to which we have referred that the relevant investigating agencies believe that the rules of specialty prevent any interrogation of Mr Modi. Furthermore if, which is the better view, the UK authorities cannot as a matter of law consent to interrogation under section 129 of the 2003 Act, that would be the end of the matter because the condition precedent to interrogation would not be fulfilled. The fact that it may never have been capable of being fulfilled is not a matter which avails the GoI.

47. As for the fourth and fifth issues, Ms Malcolm submitted that the risk of torture or ill-treatment whilst Mr Modi is located at Arthur Road prison is extremely low because (1) he will not be interrogated either there or anywhere else, and (2) the 2019 and 2021 assurances (as repeated in 2022) permit daily access by lawyers and medical professionals. Further, when Mr Modi is produced before the Mumbai Court for pre-trial or trial proceedings, he would be in judicial custody and outside the scope of possible interrogation by any relevant agency.
48. As for the sixth, seventh and eighth issues, Ms Malcolm submitted that the three other investigating agencies are covered by the assurances and the *note verbale*, and that the GoI is not required to disclose the written communications passing between these bodies and the Ministry of Home Affairs. Finally, in relation to the ninth issue and the possibility of transfer to Gujarat, Ms Malcolm relied on the express terms of the assurance given on 2 December 2025 that further interrogation will not take place, and she also advanced a submission along the lines that section 268 of the Criminal Procedure Code conferred power in the State of Maharashtra to exclude Mr Modi from the operation of section 267. Ms Malcolm advanced submissions on the remaining issues which we do not consider that we need mention.

Discussion and Conclusions

49. The jurisdiction to re-open an extradition appeal under CrimPR 50.27 requires the existence of exceptional circumstances as well as the identification of a real injustice that must be obviated. When Mr Modi's case came before us in the autumn of 2022, the material underpinning the decision in *Bhandari* was either not available or was not drawn to our attention. This Court's judgment in *Bhandari* presents a worrying picture of the use of proscribed treatment to obtain confessions which was characterised as "commonplace and endemic". Were it not for the statements made and assurances given by the GoI between September 2025 and February 2026, culminating in the *note verbale* to which we accord considerable weight, we would be minded to re-open this appeal in the exercise of this exceptional power. Understandably, the GoI has not sought to contend that the findings in *Bhandari* do not apply to Mr Modi but rests its case entirely on the quality of the assurances that it has given. Any different forensic strategy would have run the risk of protracted litigation and would have created the need for us to resolve potentially complex matters of Indian law and practice.
50. We have considered these assurances very carefully indeed. On the one hand, the mutual confidence and trust that exists between two friendly powers who have entered into binding treaty arrangements must be accorded considerable weight, as well concomitantly as solemn assurances proffered within the same framework. On the

other hand, we must recognise that there is some force in Mr Fitzgerald's submission that some of the affidavit evidence placed before us comes from persons who, on the basis of *Bhandari*, have condoned or turned a blind-eye to unacceptable treatment of detainees. Nonetheless, that submission travels only a certain distance in circumstances where, as we find, these assurances have been given by the GoI in good faith and with the intention that they should be binding. They have not been given with an eye to wriggling out of them should the need or opportunity to do so arise.

51. Our approach to inter-governmental assurances is guided by two authorities. The general principles have been laid down in *Othman v United Kingdom* (2012) 55 EHRR 1, at para 189:

“More usually, the Court will assess first, the quality of assurances given and, second, whether, in light of the receiving state's practices they can be relied upon. In doing so, the Court will have regard, inter alia, to the following factors:

- (1) whether the terms of the assurances have been disclosed to the Court;
- (2) whether the assurances are specific or are general and vague;
- (3) who has given the assurances and whether that person can bind the receiving state;
- (4) if the assurances have been issued by the central government of the receiving state, whether local authorities can be expected to abide by them;
- (5) whether the assurances concerns treatment which is legal or illegal in the receiving state;
- (6) whether they have been given by a Contracting State;
- (7) the length and strength of bilateral relations between the sending and receiving states, including the receiving state's record in abiding by similar assurances;
- (8) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers;
- (9) whether there is an effective system of protection against torture in the receiving state, including whether it is willing to co-operate with international monitoring mechanisms (including international human-rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible;

(10) whether the applicant has previously been ill-treated in the receiving state;

and

(11) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State.”

52. We will address the 11 *Othman* factors below.
53. Secondly, in *Giese v Government of the United States of America* [2018] EWHC 1480 (Admin); [2018] 4 WLR 103, this Court (Lord Burnett of Maldon CJ and Dingemans J, as the latter then was) stated, at para 38:

“38 The principles relating to the assessment of assurances were summarised by the European Court of Human Rights in *Othman v United Kingdom*; 55 EHRR 1, paras 188–189. The overarching question is whether the assurance is such as to mitigate the relevant risks sufficiently. That requires an assessment of the practical as well as the legal effect of the assurance in the context of the nature and reliability of the officials and country giving it. Whilst there may be states whose assurances should be viewed through the lens of a technical analysis of the words used and suspicion that they will do everything possible to wriggle out of them, that is not appropriate when dealing with friendly foreign governments of states governed by the rule of law where the expectation is that promises given will be kept. The principles identified in *Othman*, which are not a check list, have been applied to assurances in extradition cases in this jurisdiction. A court is ordinarily entitled to assume that the state concerned is acting in good faith in providing an assurance and that the relevant authorities will make every effort to comply with the undertakings, see *Lord Advocate v Dean* [2017] UKSC 44; [2017] 1 WLR 2721, para 36.”

54. We approach the “overarching question” identified in *Giese* not on the basis that it is solely or mainly one of Indian law and practice. That somewhat technical and granular approach undergirded most of Mr Fitzgerald’s submissions (although they were advanced with his customary flair, precision and attention to detail), together with his invitation to us to prefer the evidence of Mr Agarwal and Justice Verma over Mr Kadam. We think that the correct approach is to consider whether these assurances, even if cognisable only at a diplomatic level, are sufficiently comprehensive and reliable as to preclude any real practical possibility of interrogation of Mr Modi by any of the five agencies in question, either at Arthur Road or elsewhere. In this regard we accept Ms Malcolm’s submission that it is for the GoI to determine how these assurances should be executed. Only if we were persuaded that under Indian law the GoI simply could not execute the assurances in a way that would safeguard Mr Modi would any real issue arise.

55. Turning to the *Othman* factors, the terms of the assurances have been disclosed sufficiently to the Court. The assurances are specific and not general and vague (cf. those given in *Bhandari*). The assurances have been given by an official within the Ministry of Home Affairs competent to bind the GoI, as well as the State of Maharashtra and the five investigating agencies (which are also bound in our view by the terms of the assurances). Although India is not a signatory to UNCAT, we do not doubt that torture is not permitted under Indian law. The United Kingdom and India have a long history of friendly bilateral relations. Although there is no evidence that the assurances will be formally monitored by the GoI, it is relevant that Mr Modi under previous assurances given by the GoI will have daily access to his lawyers and medical team. As we have said, the reliability of the GoI's assurances was addressed in *Bhandari* but we do not understand this Court as in any way questioning its good faith.
56. We also accept Ms Malcolm's submission that, in the event of any alleged breach, it is unthinkable that the GoI would prevaricate or dissemble (our language, not hers), or seek to contend that the five investigating agencies were somehow not bound by the assurances we have scrutinised. That is not our reading of them and Ms Malcolm's submissions did not leave room for any such loophole.
57. Indeed, in our judgment the present case is *a fortiori* para 132 of *Bhandari* because there the "investigation agency" was unnamed and the GoI's assurance, in addition to other difficulties with it, did not state in terms that this anonymous agency had provided anything in writing. As the Court explained, and we repeat:

"The assurance that matters is the one provided by the respondent to His Majesty's Government, and there is no carve out within that assurance which would enable, say, the CBI or the Income Tax Department to remove the appellant from prison for questioning."

Further, we do not consider that, pursuant to any duty of candour or otherwise, there is any obligation on the GoI to give disclosure of intergovernmental documents evidencing the arrangements between different agencies of the executive branch of government.

58. It follows, in our view, that the GoI has provided a sheaf of assurances that are comprehensive, detailed and reliable. As we have said, whether they are enforceable in India is not relevant although we note the GoI's view, expressed on the face of the *note verbale* itself, that they are. That view is probably borne out by the decision of the Supreme Court of India in the *Abu Salem Ansari* case, although there the position was somewhat clearer in that there was a specific constitutional provision which empowered the Indian President to act. In our judgment, it is sufficient for present purposes that the assurances are cognisable at a diplomatic level because the consequences of any breach would be extremely damaging to the relationship of mutual trust and confidence between India and the United Kingdom, particularly in the context of such a high-profile individual as Mr Modi.
59. These foregoing conclusions are a complete answer to this application to re-open. Mr Modi's subsidiary arguments based on the doctrine of specialty carry no weight because, even if he is correct in contending that it covers only trial proceedings and

not prior interrogation, the GoI and the five agencies have promised that Mr Modi will not be questioned. Separately, the fact that the assurances leave open the possibility that the UK authorities (and it would have to be the Secretary of State, because the Court is *functus*) could be invited to consent to an interrogation does not avail Mr Modi because (1) the Secretary of State would be highly unlikely to consent to interrogation in the face of *Bhandari* and our judgment in this case, (2) it is highly unlikely that the Secretary of State has power to consent to interrogation under section 129 of the 2003 Act in any event, (3) it is inconceivable that the Secretary of State would consent to any trial were it to be put to her that Mr Modi has confessed to criminality under interrogation, and (4) in light of the preceding three matters, the investigating authorities would surely apprehend that interrogation would serve no practical purpose. Finally, if these provisos in the assurances are “meaningless”, as Mr Fitzgerald submitted was the case, that is hardly something that avails the GoI. We accept Ms Malcolm’s submission that if the relevant condition precedent cannot be fulfilled, the consequence is that no interrogation may occur. For the avoidance of doubt, it was common ground that if Mr Modi were interrogated (by whomsoever and for whatever reason) that would be a breach of the assurances.

60. In the circumstances, it is unnecessary for us to express a concluded view upon sections 267-269 of the Criminal Procedure Code. Ms Malcolm may well be correct in submitting that the effect of section 268 is that the State of Maharashtra would have power to issue an order which would prevent Mr Modi being transferred from there to Gujarat (and, likewise, section 269(d) disapplies the general rule in section 267 when such an order has been made). The short answer to Mr Hall’s submission is that the DRI is bound by the assurance, which means that even were Mr Modi to be produced before the Surat Court in Gujarat he could not be interrogated there. Moreover, that Mr Modi might be released on bail in India does not we think expose him to any greater risk of interrogation in light of the assurances given. Finally, we do not consider that we need resolve the issue of whether the video-conferencing facilities at Arthur Road Prison are of sufficient quality for Mr Modi to attend his trial remotely. It is obviously desirable that he attend in person, and we do not think that there is any real risk of torture or other ill-treatment during the course of the journey in Mumbai from the prison to the trial Court.

Disposal

61. For all these reasons, it is not necessary to re-open this appeal in order to avoid real injustice, and the circumstances are not exceptional so as to make it appropriate to re-open it. Mr Modi’s application under CrimPR Part 50.27 for permission to re-open his extradition appeal is refused.