

CONCERNED CITIZENS, COMPLAINANTS, VS. JUDGE ARMIE E. ELMA, RESPONDENT.

A.M. No. RTJ-94-1183. February 06, 1995

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PER CURIAM:

This administrative case arose from an anonymous letter-complaint, dated May 25, 1993, [1] charging Judge Armie E. Elma, presiding judge, Regional Trial Court of Pasig, Branch 153, with Gross Ignorance of the Law and Grave Abuse of Discretion for granting bail in a non-bailable offense. The complaint was addressed to Vice-President Joseph Estrada as Chairman of the Philippine Anti-Crime Commission (PACC) who endorsed the complaint to the Ombudsman [2] for investigation. In turn, the Ombudsman referred the case to this Court for appropriate action.

The records disclose that one Alfredo Gatus y Tiamzon was charged with illegal recruitment in large scale and estafa in five (5) separate Information, [3] before the sala of respondent Judge Elma. In the Information for Illegal Recruitment in Large Scale, dated August 14, 1992, no bail bond was recommended. [4]

On August 26, 1992, accused Gatus filed a motion [5] to fix his bail in Criminal Case No. 94126 (Illegal Recruitment in Large Scale) at P60,000.00. [6]

On the same date, respondent judge, instead of setting the application for hearing, directed the prosecution to file its Comment or Opposition to accused's Motion to Fix Bail within five (5) days from notice. [7]

On August 31, 1992, the prosecution submitted its Comment, thus:

“1. That based on the record of this case, it appears that a preliminary investigation was conducted;

“2. That the x x x investigating prosecutor who conducted the preliminary investigation (did not) recommend (any) bail for said offense;

“3. That undersigned still maintains the findings of the investigating Prosecutor. However, considering that the case is now with the Honorable Court, we submit the instant Petition for (sic) its sound discretion.” [8]

In an Order dated September 2, 1992, respondent judge set the accused's bail at P100,000.00. [9] On October 9, 1992, respondent judge approved the P100,000.00 bail posted by the accused. [10]

Considering the complaint, the Court required respondent judge to file his Comment. [11] In his Comment, [12] respondent judge admits that he failed to conduct a formal hearing prior to his grant of accused Gatus' application for bail in Criminal Case No. 94126. He, however, maintains that in ordering the prosecution to comment on accused's motion to fix bail, he has substantially complied with the requirement of a formal hearing. He further claims that he required the prosecution to adduce evidence but the latter refused and left the determination of the motion to his discretion.

The Constitution guarantees to every person under legal custody the right to bail, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong. [13]

The Rules likewise mandate that before ruling on an application for bail, a hearing should first be conducted to determine the existence of a strong evidence against the accused. [14]

Respondent judge, in granting bail to accused Gatus in Criminal Case No. 94126, disregarded this basic rule of procedure. It is a rule of long standing that bail is not a matter of right in cases involving capital offenses or where the offense for which the accused stands charged is punishable by reclusion perpetua when evidence of guilt is strong. It is true that the weight of the evidence adduced is addressed to the sound discretion of the court. However, such discretion may be exercised only after the hearing called to ascertain the degree of guilt of the accused for the purpose of determining whether or not he should be granted provisional liberty. [15] At the hearing, the court should assure that the prosecution is afforded the opportunity to adduce evidence relevant to the factual issue, with the applicant having the right of cross-examination and to introduce his own evidence in rebuttal. [16] In the case at bench, however, no formal hearing was conducted by respondent judge. He could not have assessed the weight of the evidence against accused Gatus before granting the latter's application for bail.

The necessity of hearing an application for bail has been stressed by this Court in the early case of *People v. San Diego*, [17] thus:

"The court's discretion to grant bail in capital offenses must be exercised in the light of a summary of the evidence presented by the prosecution; otherwise, it would be uncontrolled and might be capricious or whimsical. Hence, the court's order granting or refusing bail must contain a summary of the evidence for the prosecution followed by its conclusion whether or not the evidence of guilt is strong. x x x"

In granting accused Gatus' application for bail in Criminal Case No. 94126, respondent judge issued on September 2, 1992 an Order, worded as follows:

"Acting on accused's motion to fix bail which can be treated as a petition to bail, and considering the particular circumstances of this case, bail is hereby set at P100,000.00 to be put up by sufficient sureties.

"SO ORDERED. " [18]

The Order speaks eloquently for itself. On its face, it is at once apparent that respondent judge did not make any finding that the evidence against the accused was not strong to justify his grant of bail. Respondent judge merely adverts to "particular circumstances" of the case without in any way hinting their nature and character. Such an inscrutable statement does not satisfy the Constitution and the Rules.

In his Comment, respondent judge claims that his Order, dated August 26, 1992, requiring the prosecution to file its Comment/Opposition to the motion for bail, substantially complied with the provision of the Rules requiring a formal hearing. He insists that said Order amounts to a summary hearing and complies with the Rules.

The stance of respondent judge magnifies his ignorance of the law. Summary hearing is "such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is to determine the weight of the evidence for purposes of bail." [19] In receiving evidence on bail, it is true that the court is not required to try the merits of the case nor is it called to speculate on the outcome of the trial[20] Nonetheless, hearing of the application cannot be totally dispensed with. To do away with the hearing is to dispense with this time-tested safeguard against arbitrariness.

The importance of the Rule requiring the conduct of a hearing in an application for bail cannot be overemphasized. On its result depends the right of an accused to provisional liberty as opposed to the duty of the State to protect its people against dangerous elements. The resolution of the issue affects important norms in our society, liberty on one hand, and order on the other. To minimize, if not eliminate, error and arbitrariness in a judge's decision, the Rules require the judge to hear the parties and then make an intelligent assessment of their

evidence.

This is not the first time respondent judge violated the rule on bail in capital offenses. He has been previously fined for a similar offense. On February 11, 1993, in A.M. No. 92-10-889 RTC, respondent judge also granted an accused a P100,000.00 bail in a non-bailable murder case. He granted the bail without affording the prosecution an opportunity to show it had a strong evidence against the accused. He was fined P10,000.00. On a motion for reconsideration, his fine was reduced to P5,000.00. He was, however, sternly warned that a repetition of the same or similar offense will be dealt with more severely.

It thus appears that in two (2) capital cases, respondent judge has run roughshod on the right of the prosecution to oppose bail of persons accused of capital offenses, a right rooted on the necessity to protect the safety of the people. Respondent judge's attitude is lamentable for it contributes to the deterioration of the peace of our community and shows callousness to the cry of our people for a more ordered liberty. As respondent judge has chosen to be stubborn in his ignorance of our rules, he has forfeited his privilege to wield the gavel of justice.

WHEREFORE, respondent Judge Armie E. Elma, presiding judge, Branch 153, Regional Trial Court of Pasig, Metro Manila, is hereby found guilty of gross ignorance of the law and grave abuse of discretion. Respondent judge is hereby DISMISSED from service, with forfeiture of all retirement benefits and accrued leave credits and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations. This Resolution is immediately executory.

SO ORDERED.

Narvasa, C.J., Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.

Feliciano, and Francisco, JJ., no part.

[1] Rollo, pp. 8-9.

[2] Docketed as OMB-0-93-1940.

[3] Rollo, pp. 51-60.

[4] Under Article 39 (a) of the Labor Code, the crime of illegal recruitment in large scale is punishable with life imprisonment and a fine of P100,000.00.

[5] Rollo, p. 13.

[6] Likewise, in connection with his four (4) estafa cases (docketed as Criminal Case Nos. 94127-30), accused filed a motion to reduce bail from a total of P68,000.00 to P40,000.00. Respondent judge granted the motion on the same day; Rollo, pp. 42-43.

[7] Order dated August 26, 1992, Rollo, p. 14.

[8] *id.*, p. 17.

[9] *id.*, p. 18.

[10] *id.*, p. 19.

[11] *id.*, p. 8.

[12] *id.*, pp. 76-80.

[13] Section 13, Article III, 1987 Constitution.

[14] Section 5, Rule 114, specifically provides:

SEC. 5. Burden of proof in bail application. - At the hearing of an application for admission to bail filed by any person who is in custody for the commission of an offense punishable by reclusion perpetua to death, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearings shall be considered automatically reproduced at the trial, but upon motion of either party, the court may recall any witness for additional examination unless the witness, is dead, outside of the Philippines or otherwise unable to testify.

[15] Tabil v. Eisma, Adm. Matter No. 276-MJ, June 27, 1975, 64 SCRA 378.

[16] Ocampo v. Bernabe, No. L-439, August 20, 1946, 77 Phil. 55.

[17] No. L-29676, December 24, 1968, 26 SCRA 522.

[18] Rollo, p. 47.

[19] Ocampo v. Bernabe, supra, citing Herras Teehankee v. Director of Prisons, 76 Phil. 756.

[20] 8 C.J.S. 93, at p. 94.

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