

IN RE: PETITION FOR HABEAS CORPUS IN BEHALF OF DETAINEE ASNAWE UNTE Y COSAIN HADJI MALIK UNTE, PETITIONER.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Asnawe Unte was arrested and charged with violation of Sections 5 and 11, Article II of Republic Act No. 9165[1] before the Regional Trial Court of San Fernando, Pampanga, Branch 48. Accused Asnawe filed a petition for bail which was granted by the trial court in its September 2, 2014 Order, to wit:

IN VIEW OF THE FOREGOING, the prosecution having failed to present strong evidence of guilt of the accused during the hearing on the petition for bail, accused Asnawi Unte y Cosain, is allowed to post bail in the amount of Four Hundred Thousand Pesos (PHP 400,000.00) in Criminal Case No. 20273 for Violation of Section 5, Article II of R.A. No. 9165 for his provisional liberty.

In addition to that, the Court hereby fixed the bail of the accused in Criminal Case No. 20274 for Violation of Section 11, Article II of R.A. 9165 in the amount of Two Hundred Thousand Pesos (PHP 200,000.00) for his provisional liberty.

Likewise, in view of the gravity of the offenses particularly Section 5, Article II of R.A. 9165; the probability of accused appearing of the trial (as per record, accused is residing at L-8, B-5, Bahay Karangalan Paliparan III, Dasmariñas, Cavite); and to minimize the possibility of accused jumping bail, the bail must be posted in cash. Also, no motion for reduction of bail shall be entertained by this Court.

It is understood that the instant resolution by this Court is only with respect to the petition for bail and will not in any way affect the merits of the case nor the guilt or innocence of the accused.

SO ORDERED.[2] [Emphasis Ours.]

Accused Asnawe filed a Motion for Reconsideration asking the trial court to allow him to post bail by surety or property bond reasoning that requiring him to post bail in cash is “unreasonable and exorbitant considering his financial capacity”.[3]

On October 8, 2014, the trial court issued another Order with the following amendments:

With respect to Crim. Case No. 20273 for violation of section 5, Article II of R.A. 9165, the bail for the provisional liberty of the accused is fixed at P400,000.00 to be posted in cash. In Crim. Case No. 20274 for violation of section 11, Article II of R.A. 9165, the bail for the provisional liberty of the accused is fixed at P200,000.00 which may be posted either in cash or surety bond. If the accused will post the bail via surety bond, the amount will be maintained at P200,000.00. If it will be posted in cash, the bail is reduced from P200,000.00 to P100,000.00.

SO ORDERED.[4]

Hadji Malik Unte, father of accused Asnawe, then filed this Petition for Habeas Corpus claiming that the trial court denied accused Asnawe's right to bail by “imposing [a] prohibitory sum or exacting unreasonable

conditions”.[5] Petitioner further claims that accused Asnawe was arrested without warrant, that he was not assisted by counsel during his custodial investigation, and that the Informations were void for lack of probable cause.[6]

The petition for habeas corpus cannot be given due course. Section 4, Rule 102 of the Rules of Court on habeas corpus provides:

Sec. 4. When writ not allowed or discharge authorized. - If it appears that the person to be restrained of his liberty is in the custody of an officer under process issued by a court or judge; or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment. [Emphasis Ours.]

It is clear from the rules that habeas corpus would not lie where the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court which has jurisdiction to do so.[7] The fact that accused Asnawe was arrested without warrant does not necessarily mean that his detention was illegal considering that warrantless arrests are allowed under Section 5, Rule 113 of the Rules of Court.[8] Also, petitioner's allegation that the Informations were invalid because the preliminary investigation was invalid is not a ground for the issuance of a writ of habeas corpus. His remedy is to ask the court which issued the warrant of commitment for an investigation or reinvestigation of the case.[9]

Regarding petitioner's claim that the bail set was iniquitous, We reiterate that where restraint is under legal process, mere errors and irregularities, which do not render the proceedings void, are not grounds for relief by habeas corpus because in such cases, the restraint is not illegal.[10] Habeas corpus is not in the nature of a writ of error; nor intended as substitute for the trial court's function.[11] It cannot take the place of appeal, certiorari or writ of error. The writ cannot be used to investigate and consider questions of error that might be raised relating to procedure or on the merits.[12] Accused Asnawe's remedy was to file a petition for certiorari if the trial court committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the said order.[13]

FOR THESE REASONS, the petition for habeas corpus is DISMISSED.

SO ORDERED.

Reyes, Jr., J.C., (Chairperson) and Inting, S.B., JJ., concur.

[1] Known as the Comprehensive Dangerous Drugs Act of 2002. Section 5 refers to sale, trading, administration, dispensation, delivery, distribution and transportation of dangerous drugs and/or controlled precursors and essential chemicals. Section 11 refers to possession of dangerous drugs.

[2] Rollo, p. 18.

[3] Id., p. 21.

[4] Id., p. 25.

[5] Id., p. 9.

[6] Id., pp. 9-10.

[7] Paredes v. Sandiganbayan, G.R. No. 89989, January 28, 1991, as cited in Regalado, Florenz D., Remedial Law

Compendium, Volume II, Tenth Revised Edition, pp. 168-169.

[8] Rule 113. Section 5. Arrest, without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and he shall be proceeded against in accordance with section 7 of Rule 112.

[9] Paredes v. Sandiganbayan, supra, as cited in Regalado, Florenz D., Remedial Law Compendium, Volume II, Tenth Revised Edition, pp. 168-169.

[10] See Glenn Caballes v. Court of Appeals, G.R. No. 163108, February 23, 2005 citing 39 CJS, Habeas Corpus, §15, p. 448.

[11] Id., citing Burton v. Smithers, 31 F. 2d 966 (1929).

[12] Id., citing U.S. v. Pridgeon, 38 L. Ed. 627; Ex Parte Kearsey 38 L. Ed. 391.

[13] Id., citing People v. Gomez, 325 SCRA 61 (2000).

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