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Checklist III

What To Do After Pre-Trial To Initial Trial

1. Cause subpoena to be issued: Subpoena ad testificandum may be signed by the clerk or branch clerk of court. But subpoena duces tecum must be signed by the judge (who must determine that the subject thereof is prima facie relevant).

2. If petition for bail is filed by the accused who is charged with an offense punishable by death or reclusion perpetua:

2.1 Set the petition for hearing and require the prosecutor to comment thereon, either by way of recommendation or opposition. Such notice of hearing should also be served upon all other accused, if any.

2.2 If the prosecutor opposes the petition, allow him to present his/her evidence to show that the prosecution's available evidence is strong. Hearing may be summary or otherwise. Cross-examination by the petitioner and any other accused shall be allowed. Petitioner shall also be allowed to offer and present evidence. Summary hearing is one that focuses on quantity and character of proof in anticipation of that to be presented at the regular trial, but not to be mere sham or pretense.¹²⁷

2.3 Even if the prosecutor recommends bail or interposes no objection to the petition for bail, the court must still set the case for hearing.

2.4 Resolve the petition for bail with a narration of the evidence collectively deemed either strong or weak to justify the conclusion made.

2.5 Indispensable requirements

There must be a hearing.¹²⁸ Evidence of guilt must be strong. Prosecution must be given full opportunity to present evidence.¹²⁹

Note: The Court may not grant bail simply for non-appearance of the prosecution but should ask the prosecution such questions as would ascertain the strength of the state in evidence and judge the adequacy of the bail.¹³⁰

2.6. Duties of a Judge in case an application for bail for crimes punishable by reclusion perpetua or higher

In the light of the applicable rules on bail and the jurisprudential principles just enunciated, the Court laid down the duties of the trial judge in case an application for bail is filed:

2.6.1 Notify the prosecutor of the hearing of the application for bail or require him to submit his/her recommendation;¹³¹

2.6.2 Conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present

evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion;¹³²

2.6.3 Decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution;¹³³

2.6.4 If the guilt of the accused is not strong, discharge the accused upon the approval of the bailbond.¹³⁴ Otherwise, petition should be denied.¹³⁵

TEN COMMANDMENTS FOR A JUDGE ON APPLICATIONS FOR BAIL

1. Do not grant bail unless the accused is in legal custody.¹³⁶
2. Do not act on an application for bail or set it for hearing unless you have jurisdiction over the person of the accused and of the case.¹³⁷
3. Do not grant bail in non-bailable offenses without application and notice to the prosecutor and in bailable offenses without notice to or recommendation of prosecutor.¹³⁸
4. Do not grant bail in non-bailable offenses without a hearing.¹³⁹ (Even if the investigating judge had granted bail or the prosecutor in filing the Information had recommended bail.)
5. Do not grant bail in non-bailable offenses without giving the prosecution full opportunity to present its evidence.¹⁴⁰
6. Do not grant bail in non-bailable offenses simply because of the prosecution's non-appearance. ¹⁴¹
7. Do not grant bail on appeal after the accused have been convicted of a non-bailable offense¹⁴² or from a non-bailable offense to a bailable offense. This should be addressed to the appellate court.¹⁴³
8. Do not grant bail when the penalty imposed by the Regional Trial Court exceeds six (6) years but not more than twenty (20) years where any of the circumstances mentioned in Section 5, Rule 114 are present.¹⁴⁴
9. Do not grant bail after the judgment has become final unless the accused has applied for probation before commencing to serve sentence, the penalty and the offense being within the purview of the probation law.¹⁴⁵
10. Do not grant bail after the accused had commenced to serve sentence.¹⁴⁶

¹²⁷ Ocampo v. Bernabe, 77 Phil. 55 [1946].

¹²⁸ Basco v. Rapatala, A. M. No. RTJ-96-1335, March 5, 1997, 269 SCRA 230.

¹²⁹ People v. Dacudao, G. R. No. 81389, February 21, 1989, 170 SCRA 489; People v. San Diego, No. L-29676, December 24, 1968, 26 SCRA 522; People v. Calo, G. R. No. 88531, June 18, 1990, 186 SCRA 620; Morado v. Tayao, A. M. No. 93-8-1204RTC, February 7, 1994, 229 SCRA 723; Corpus v. Maglalang, G. R. No. 78162, April 19, 1991, 196 SCRA 41; Almeron v. Sandido, A. M. No. MTJ-97-1142, November 6, 1997, 281 SCRA 415.

¹³⁰ Librarios v. Dabalos, A. M. No. RTJ-89-286, July 11, 1991, 199 SCRA 48 cited in Borinaga v. Tamin, A. M. No. RTJ-93-936, September 10, 1993, 226 SCRA 206; Aurillo v. Francisco, A. M. RTJ-93-1097, August 12, 1994, 235 SCRA 283; Aguirre v. Belmonte, A. M. No. RTJ-93-1052, October 27, 1994, 237 SCRA 778; Santos v. Otilida, A. M. No. RTJ-94-1217, June 16, 1995, 245 SCRA 56; De los Santos-Reyes v. Montesa, A. M. No. RTJ-93-983, August 7, 1995, 247 SCRA 85; Tabao v. Espina, RTJ-96-13447, June 14, 1996, 257 SCRA 298.

131 Rules of Court, Rule 114, Sec. 18.

132 Rules of Court, Rule 114, Secs. 7 and 8.

133 Baylon v. Sison, A. M. No. 92-7-360-0, April 6, 1995, 243 SCRA 284.

134 Rules of Court, Rule 114, Sec. 19.

135 Basco v. Rapatalo, A. M. No. 96-1335, March 5, 1997, 269 SCRA 220 reiterated in People v. Cabral, G. R. No. 131909, February 18, 1999, 303 SCRA 361.

136 Feliciano v. Pasicolan, No. L-14567, July 31, 1967, 2 SCRA 888; Mendoza v. CFI of Quezon, Nos. L-35612-14, June 27, 1973, 51 SCRA 369; Paderanga v. Court of Appeals, G. R. No. 115407, August 28, 1995, 247 SCRA 741; Aguirre v. Belmonte, supra, note 130; De los Santos-Reyes v. Montesa 247 SCRA 85.

137 Dinapol v. Baldado, A. M. No. RTJ-92-898, August 5, 1993, 225 SCRA 110; Borinaga v. Tamin, supra, note 130; Aguirre v. Belmonte, supra, note 130.

138 Rules of Court, Rule 114, Sec. 18; Chin v. Gustilo, A.M. No. RTJ-94-1243, August 11, 1995, 247 SCRA 175.

139 Rules of Court, Rule 114, Sec. 18; Borinaga v. Tamin, supra, note 130, Go v. Court of Appeals, April 7, 1993, 221 SCRA 397; People v. Dacudao, G. R. No. 81389, February 21, 1989, 170 SCRA 489; People v. Casingal, G. R. No. 87163, March 29, 1995, 243 SCRA 37; Lardizabal v. Reyes, A. M. No. MTJ-94-877, December 5, 1994, 238 SCRA 640; Tabao v. Espina, supra, note 130; Santos v. Otilida supra, note 131.

140 People v. Dacudao, supra, note 129; Borinaga v. Tamin, supra, note 130; Guillermo v. Reyes, 240 SCRA 154; Mamolo, Sr. v. Narisma, A. M. No. MTJ-96-1072, January 31, 1996, 252 SCRA 613; People v. Calo, G. R. No. 88531, June 18, 1990, 186 SCRA 620.

141 Borinaga v. Tamin, supra, note 130; Libarios v. Dabalos, A. M. No. RTJ-89-286, July 11, 1991, 199 SCRA 48; Aguirre v. Belmonte, supra, note 130; Baylon v. Sison, supra, note 133; Tucay v. Domagas, A. M. No. RTJ-95-1286, March 2, 1995, 242 SCRA 110; Paderanga v. Court of Appeals, G. R. No. 115407, August 28, 1995, 247 SCRA 741.

142 Adm. Circular No. 2-92; People v. Divina, G. R. Nos. 93808-09, April 7, 1993; 221 SCRA 209; People v. Fuertes, G. R. No. 90643, June 25, 1993, 223 SCRA 619; People v. Nitcha, G. R. No. 113517, January 19, 1995, 240 SCRA 283.

143 Rules of Court, Rule 114, Sec. 5.

144 Ibid.

145 Rules of Court, Rule 114, Sec. 24.

146 Ibid.

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