

MEDARDO MUÑOZ, PETITIONER, VS. EMILIO RILLORAZA, JOSE B. BERNABE AND MANUEL ESCUDERO, ASSOCIATE JUDGES OF THE PEOPLE'S COURT, FOURTH DIVISION, RESPONDENTS.*G.R. No. L-1833. May 13, 1949*

Ponente: OZAETA, J.

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Petitioner was accused of treason before the People's Court in an information dated February 23, 1946. No bail was recommended in the information. He pleaded not guilty and applied for bail. By agreement of the parties the court set the bail application and the case on the merits for joint hearing on January 15, 1947; but on said date the court postponed the hearing to March 17 and 18, 1947, upon motion of the defense and over the objection of the prosecution. On March 17, 1947, again upon motion of the defense and over the objection of the prosecution, the court ordered the hearing postponed "until further petition of defense or until new assignment." Two subsequent assignments for hearing made by the court were likewise postponed upon petition of the prosecution with the conformity of the defense. At last the agreed joint hearing was commenced on November 19, 1947.

After the first witness for the prosecution had testified the petitioner moved the court to limit the hearing to his application for bail so that he might enjoy provisional liberty pending the trial on the merits. That motion was denied by the court, which continued the joint hearing on November 20, 1947, at which another witness for the prosecution testified, over the objection of the petitioner, who had asked that the joint hearing be suspended until he could raise the question of his bail before the Supreme Court.

The continuation of the joint hearing having been set by the court for December 12, 15 and 16, 1947, the petitioner, on December 3, filed the present petition for the writ of mandamus to compel the respondent judges of the Fourth Division of the then People's Court to hear and decide his application for bail before continuing the hearing of his case on the merits, and for the writ of preliminary injunction to restrain them from continuing the joint hearing. This Court required the respondents to answer but declined to restrain them.

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Respondents did not unlawfully neglect the performance of their official duty to hear the petitioner's application for bail. As a matter of fact the very act complained of is that they persisted in hearing that application. But that hearing, the petitioner complains, was at the same time a hearing of the case on the merits and the resolution on his application for bail might be delayed. Hence he wanted a summary hearing on his application before the trial on the merits.

Considering that the joint hearing on the application for bail and on the merits of the main case was adopted by the respondents by agreement of both parties, and that the repeated postponements of that hearing with the consequent delay were made at petitioner's instance or with his conformity, we find no factual and legal basis upon which to declare the respondents guilty of an unlawful neglect of duty to justify the issuance of the mandatory writ prayed for. It is true that the petitioner had the right to apply for bail and to have his application

heard summarily and promptly. But that right could be waived, and he did waive it, firstly, by agreeing to a joint hearing and, secondly, by himself asking and consenting to repeated postponements. He therefore cannot be said to have been unlawfully excluded from the use and enjoyment of his right. (See Sec. 3, Rule 67.)

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It was discretionary on the part of the respondent judges to permit or not to permit the petitioner to go back on his previous agreement for a joint hearing in the interest of justice. That discretion cannot be controlled by this Court through the writ of mandamus.

We do not know, although we may assume, that after the filing of this petition the respondent judges continued with the hearing and received sufficient evidence upon which to decide the application for bail. If that be so and if the application had not been decided up to the time the People's Court was abolished, the petitioner could and should urge the proper Court of First Instance to decide it.

The petition is denied, without prejudice to petitioner's seeking a prompt decision on his application for bail in the proper Court of First Instance, in case he has not yet done so. No pronouncement as to costs.

Moran, C. J., Paras, Feria, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

DISSENTING

PERFECTO, J.:

We dissent from the majority's decision. In our opinion, the petition should be granted and thus we vote.

The petition for bail should have been and should be disposed of without any delay. Otherwise, the purposes of the provisions of the Constitution on bail would be defeated. Bailing of an accused is a pre.iminayr step in criminal proceedings and should not be postponed regardless of any consideration. As in this case, said step is delayed until the evidence on the merits shall have been presented. Such delay will make useless the constitutional guarantee as to the right of an accused to be bailed.

The trial court failed to do its official duty and the Supreme Court also is failing to do its duty by refusing to give to petitioner the remedy he is praying for.

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