

**RODOLFO GERARDO (ALIAS MAGELLAN GERARDO), PETITIONER,
VS. JUDGE OF FIRST INSTANCE OF ILOCOS NORTE, RESPONDENTS.***G.R. No. L-3451. May 29, 1950*

Ponente: TUASON, J.

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The petitioner, accused of murder in Criminal Case No. 938 of the Court of First Instance of Ilocos Norte, files this petition for certiorari to set aside certain orders of that court, to revoke an order of the Justice of the Peace of Laoag, to order his release on bail for P20,000 so that he can prepare for his trial, and to issue a preliminary injunction to restrain the respondent Judge from hearing his case until after this petition shall have been decided. The prayer for preliminary injunction was granted.

It appears that the Justice of the Peace of Laoag, after conducting a preliminary investigation set the defendant's bail at P40,000 for his temporary release. Having failed to put up a bond and having been bound over to the Court of First Instance for trial, the defendant asked the latter court to reduce the amount required by the Justice of the Peace to P20,000.00. The Provincial Fiscal not only objected to the requested reduction but moved that the accused's application for bail be totally denied. Thereupon Judge Manuel P. Barcelona directed the prosecution "to introduce such of its witnesses on the witness stand as he may deem sufficient so as to give a chance to the defense to cross examine them," and authorized the defense to present counter evidence.

But such hearing was postponed four times and trial on the merits twice, all at the instance of the accused. Impatient at these repeated continuances, Judge Belmonte (Judge Barcelona having been detailed to another court) set the case for trial on the merits for November 14, 1949 apparently with a warning that no further request for postponement would be entertained.

It was that trial which, the defendant succeeded in preventing, thanks to this Court's issuance of a writ of preliminary injunction. And he would not under any circumstances go to trial, if he could have his way, unless he was first set free on bail at the amount fixed by him.

In *Ocampo vs. Bernabe* (43 Off. Gaz., 1632 August), [1] this Court held that, since the discretion to grant bail in capital offenses depends on the weight of evidence, such, evidence should be exhibited before the court. This Court added that the hearing of an application for bail may be summary or otherwise, in the court's discretion.

This ruling implies that the court is not obliged to conduct a separate proceeding to determine the right of an accused to be admitted to bail.

It appearing that the trial which the defendant has succeeded in having suspended had for one of its purposes, as the respondent Judge alleges, precisely to determine whether bail should be allowed, it is clear that His Honor did not exceed his jurisdiction or abused his discretion. In a way, a regular trial has advantage over a summary one as a means of reaching a decision on an application for bail, in that "new presumptions as to the prisoner's guilt or innocence are raised with each step of the prosecution." At any rate, the court has the choice of method to attain

this end.

This Court can not pass upon the question of the petitioner's right to bail as there is nothing before us showing the character and extent of the proof the prosecution has against him. Not even a copy of the information is attached to the petition, nor are there allegations touching upon such evidence.

The most the defendant could ask for would be an order issued to the Court of First Instance to grant him an opportunity to show that he is entitled to bail. But such opportunity was offered to or even pressed upon him and he refused to take advantage of it for reasons which we do not think were meritorious at all.

The petition is denied and the preliminary injunction heretofore issued is dissolved, with costs against the petitioner.

Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

[1] 77 Phil, pp. 56.

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