

**REYNALDO C. VILLASENOR, PETITIONER, VS. HON. MAXIMO ABANO,
JUDGE OF THE COURT OF FIRST INSTANCE OF MARINDUQUE, AND
THE PROVINCIAL FISCAL OF MARINDUQUE, RESPONDENTS.**

G. R. No. L-23599. September 29, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The questions presented in this, an original petition for certiorari, took root in Criminal Case 2299 (Court of First Instance of Marinduque) for the murder of Boac police sergeant Alfonso Madia, lodged by the Provincial Fiscal against petitioner.[1] Petitioner, defendant below, was, on motion, admitted to a P60,000.00-bail. The amount of the bond was, on verbal representation of petitioner's wife, reduced to P40,000.00. On May 29, 1964, petitioner posted a property bond, was set at provisional liberty.

Before arraignment on the murder charge, however, respondent Provincial Fiscal amended the information. This time he accused petitioner with "Direct Assault Upon an Agent of a Person in Authority with Murder."

On August 7, 1964, respondent judge sua sponte cancelled petitioner's bond, ordered his immediate arrest.

On petitioner's motion to reconsider, respondent judge, on September 9, 1964, after hearing, resolved to admit him to bail provided he puts up a cash bond of P60,000.00.

On September 15, 1964, on petitioner's motion that the original bond previously given be reinstated, respondent judge resolved to fix "the bond anew in real property in the amount of P60,000, but to be posted only by residents of the province of Marinduque actually staying therein" with properties which "must be in the possession and ownership of said residents for five years."

On October 1, 1964, petitioner came to this Court on certiorari, with a prayer for preliminary injunction. He seeks to set aside respondent judge's orders of August 7, September 9 and September 15, 1964; to reinstate the bail bond theretofore approved by respondent judge on May 29, 1964, and for other reliefs. He charges respondent judge with having acted without and/or in excess of his jurisdiction and with grave abuse of discretion, and with violation of the Constitution and the Rules of Court in issuing the disputed orders.

On October 3, 1964, this Court issued a writ of preliminary injunction upon a P1,000.00-bond. We restrained respondents from enforcing the orders in question and from further proceeding with the case. On November 5, 1965, we modified the writ of preliminary injunction; we lifted the portion thereof which prohibited continuation of the proceedings in the case below, Criminal Case 2299, to avoid delay in the prosecution thereof.

Upon respondent's separate returns, the case was submitted without argument.

- We need not pass upon respondent judge's orders of August 7, 1964 cancelling petitioner's bail, and September 9, 1964 admitting the accused anew to cash bail. The August 7, 1964 order was superseded by that of September 9, 1964. This, in turn, was replaced by the last order of September 15, 1964, by virtue of which the cash bond

required was reverted back to property bond. The two orders of August 7 and September 9, 1964 thus became functus officio,[2] A rule of ancient respectability is that it is not the function of a court of justice to furnish answers to purposeless questions that no longer exist.[3] Our inquiry accordingly narrows down to the three-pronged attack levelled by petitioner against the September 15, 1964 order of respondent judge. We propose to discuss them in seriatim.

- Forefront amongst the three problems is this: Does the P60,000.00-bond fixed by respondent judge transgress the constitutional injunction that "(e)xcessive bail shall not be required?"[4] Petitioner's submission is that he is a mere government employee, earning but a monthly salary of P210.00, and the sole breadwinner of a family of five.

To be read with the constitutional precept just adverted to is Section 12, Rule 114, Rules of Court, which provides that "the court may, upon good cause shown, either increase or reduce the amount" of the bail, and that "defendant may be committed to custody unless he gives bail in the increased amount he is called upon to furnish."

Along with the court's power to grant bail in bailable cases is its discretion to fix the amount therefor,[5] and, as stated, to increase or reduce the same.[6] The question of whether bail is excessive "lays with the court to determine." [7]

In the matter of bail fixing, courts perforce are to be guided at all times by the purpose for which bail is required. The definition of bail in Section 1, Rule 114, Rules of Court, gives this purpose — "the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance." [8] And, in amplification thereof, Section 2 of the same rule states that the condition of the bail is that "defendant shall answer the complaint or information in the court in which it is filed or to which it may be transferred for trial, and after conviction, if the case is appealed to the Court of First Instance upon application supported by an undertaking or bail, that he will surrender himself in execution of such judgment as the appellate court may render, or that, in case the cause is to be tried anew or remanded for a new trial, he will appear in the court to which it may be remanded and submit himself to the orders and processes thereof."

Expressions in varying language spell out in a general way the principles governing bail fixing. One is that the amount should be high enough to assure the presence of defendant when required but no higher than is reasonably calculated to fulfill this purpose.[9] Another is that "the good of the public as well as the rights of the accused," [10] and "the need for a tie to the jurisdiction and the right to freedom from unnecessary restraint before conviction under the circumstances surrounding each particular accused," [11] should all be balanced in one equation.

We are not to consider solely the inability of a defendant to secure bail in a certain amount. This circumstance by itself does not make the amount excessive.[12] For, where an accused has no means of his own, no one to bail him out, or none to turn to for premium payments, any amount fixed no matter how small would fall into the category of excessive bail; and, he "would be entitled to be discharged on his own recognizance." [13]

So it is, that experience has brought forth certain guidelines in bail fixing, which may be summarized as follows: (1) ability of the accused to give bail; (2) nature of the offense; (3) penalty for the offense charged; (4) character and reputation of the accused; (5) health of the accused; (6) character and strength of the evidence; (7) probability of the accused appearing at trial; (8) forfeiture of other bonds; (9) whether the accused was a fugitive from justice when arrested; and (10) if the accused is under bond for appearance at trial in other cases.[14]

But, at bottom, in bail fixing, "the principal factor considered, to the determination of which most other factors are directed, is the probability of the appearance of the accused, or of his flight to avoid punishment." [15] Of importance then is the possible penalty that may be meted. Of course, penalty depends to a great extent upon the gravity of the offense.

Here, petitioner is charged with a capital offense, direct assault upon an agent of a person in authority with murder. A complex crime, it may call for the imposition of capital punishment. Then, Circular 47 dated July 5, 1946 of the Department of Justice, reiterated in Circular 48 of July 18, 1963, directed prosecuting attorneys to recommend bail at the rate of "P2,000.00 per year of imprisonment, corresponding to the medium period of the penalty prescribed for the offense charged, unless circumstances warrant a higher penalty. The reasonableness of this circular has already received this Court's imprimatur in one case. [16] We are unprepared to downgrade this method of computation, what with a compound of reduced peso value and the aggravated crime climate.

We see no discernible abuse of discretion, given the facts and the law, when respondent judge fixed petitioner's bail at P60,000.00.

- Exacting serious consideration is that portion of the disputed order of September 15, 1964, where respondent judge requires that the property bond be posted only by "residents of the province of Marinduque actually staying therein." This question is of first impression.

The drive of petitioner's argument is that this condition collides with Section 9, Rule 114, Rules of Court, which in part recites:

"SEC. 9. Qualification of sureties.— The necessary qualifications of sureties to a bail bond shall be as follows:

(a) Each of them must be a resident householder or freeholder within the Philippines;

... "

We read this statute to mean that the directive that bondsmen be resident householders or freeholders in the Philippines, is but a minimum requirement. Reason for this is that bondsmen in criminal cases, residing outside of the Philippines, are not within the reach of the processes of its courts. The provision under consideration, however, makes no attempt "to cover the whole field of what is necessary for a bondsman before he is allowed to make bonds in the various courts;" nor does it "attempt to take away the inherent right of the court to properly administer its affairs." [17] Residence within the country is not the only thing that could be required by the courts; it is not intended to tie up the hands of a judge to approve bail so long as it is offered by a resident householder or freeholder within the Philippines. It is to be treated "as cumulative, rather than exclusive, of the inherent power" of the courts to determine whether bail proffered should be accepted. [18] For, in principle, a court has broad powers essential to its judicial function. [19]

We look in retrospect at the situation confronting respondent judge. What prompted him to require as condition that petitioner's bondsmen be residents of the province of Marinduque actually staying therein? In this return to the petition before this Court, respondent judge reasons out that it has been his experience that "it is hard to send notices to people outside of the province." He explains that the usual procedure of his clerk of court is to send notices by registered mail accompanied by return cards; that when trial comes, the return cards in many instances have not yet been received in court; that when the parties fail to appear, there is no way of knowing whether the notices have been duly received; that he cannot order the confiscation of the bond and the arrest of the accused, because he is not sure whether the bondsmen have been duly notified; that sending telegrams to people outside the province is costly, and the court cannot afford to incur much expenses.

The posture taken by respondent judge does not offend the good sense of justice. Bail is given to secure

appearance of the accused. If bondsmen reside in far away places, even if within the Philippines, the purpose of bail may be frustrated. There is the insufficiency of the mails as an effective means of communication. And then, there is the problem of complying with the constitutional mandate of speedy trial. If notice to sureties is not served, no trial can be had. For sureties, in legal contemplation, are defendant's mancaptors. In the circumstances here obtaining, it would not seem unfair if the judge should require, as he did, that sureties be so situated that court processes could reach them on time. Because, by both the Constitution and the law, sureties should be sufficient.[20] And, sureties are deemed sufficient not only when they are of sufficient financial ability. They must also be "of sufficient vigilance to secure the appearance and prevent the absconding of the accused." [21] They cannot be said to be of sufficient vigilance to secure defendant's appearance whenever required, if the court should experience difficulty in communicating with them. Here, respondent judge only wanted to make sure that when the proper time comes for the court to order the sureties to produce the person of defendant, no undue delay will be incurred.

Weighing as heavily against petitioner's case is the fact that a reading of his petition fails of an averment that the requisite exacted that bondsmen be residents of and actually staying in Marinduque would cause him prejudice. The burden of his arguments solely is that such a condition runs counter to the rules of court. He did not even say that he cannot secure such sureties. On the contrary, suggestion there is in the record that he is a former agent of the governor of Marinduque. Implicit in all these is that if error there was in the disputed order of September 15, 1964, petitioner has not shown that it was prejudicial error calling for correction.[22]

The situation here presented does not warrant substitution of our judgment for that of respondent judge's. We are not called upon to strike down respondent judge's order on this point as an abuse of discretion.

- Also assailed as beyond the power of respondent judge is the requirement that properties to be offered as bond must be "in the possession and ownership of the sureties for at least five years." Respondent judge, in his return, relies on Circular 2, dated January 23, 1964, of the Honorable, the Secretary of Justice, addressed, amongst others, to Judges of First Instance. That circular recites that it had been brought to the attention of the Department of Justice that in certain provinces, unscrupulous persons who are spurious land owners have been accepted as sureties. The Secretary then suggested that "(i)t may be a good policy not to accept as bail bonds real properties not covered by certificates of title unless they have been declared for taxation purposes in favor of the person offering them as bond for at least five (5) years."

Basically, reason is with this requirement. Its purpose, so the circular states, is to "prevent the commission of frauds in connection with the posting of personal bail bonds and to protect the interests of the Government." Really, if the bondsmen is not the owner, bail fails of its purpose, prejudice to the government sets in.

We note, however, that the order of September 15, 1964 spoke of properties in general. It did not exclude properties registered under the Torrens system. A Torrens title is indefeasible. Failure of specificity on the part of respondent judge then could have been a case of oversight. To obviate misunderstanding, we take it upon ourselves to clarify that order. We do say now that the order of September 15, 1964 is to be understood as excluding properties covered by Torrens titles from the requirement that properties to be offered as bond must be "in the possession and ownership of the sureties for at least five years."

- In the end we say that respondent judge's order of September 15, 1964, as thus clarified, is here confirmed, considering the overall environmental circumstances. We are not to be understood as laying down here specifics in bail fixing, bail approval or bail denial. Discretion, indeed, is with the court called upon to rule on the question of bail. We must stress, however, that where conditions imposed upon a defendant seeking bail would amount to a refusal thereof and render nugatory the constitutional right to bail, we will not hesitate to exercise our supervisory

powers to provide the required remedy.

With the observations heretofore adverted to, we vote to dismiss the petition for certiorari, and to dissolve the writ of preliminary injunction issued herein.

Costs against petitioner. So ordered.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro and Angeles, JJ., concur.

Petition dismissed.

[1] *People of the Philippines vs. Reynaldo Villasenor y Cordero alias Reny*," Court of First Instance of Marinduque.

[2] *De la Fuente vs. Jugo*, 76 Phil. 262,264; *Zarcal vs. Heirero*, 83 Phil. 711, 712-713; *Madrigal & Co. vs. Court of Appeals*, 92 Phil. 941, 944; *Canlas vs. Judge of the Court of First Instance*, L-19733, November 28, 1964.

[3] *Remonte vs. Bonto*, L-19900, February 28, 1966, citing cases.

[4] Section 1 (16), Article III, Constitution.

[5] 8 C.J.S., p. 13.

[6] See: *Sy Guan vs. Amparo*, 79 Phil. 670, 671.

[7] *Weems vs. United States*, 217 U.S. 349, 369, 54 L. ed. 793, 799. See: IV Moran, *Comments on the Rules of Court*, 1963 ed., p. 136, Navarro, *Criminal Procedure*, 1960 ed., p. 232. "When bail is allowed, unreasonable bail is not to be required; but the constitutional principle that demands this is one which, from the very nature of the case, addresses itself exclusively to the judicial discretion and sense of justice of the court or magistrate empowered to fix upon the amount." *Green vs. Petit*, 54 N.E. 2d. 281, 282: citing *Cooley*, *Constitutional Limitations*, 5th ed., p. 378.

[8] Italics supplied.

[9] *Am. Jur.* 2d., p. 824, citing cases.

[10] *Braden vs. Lady*, 276 S.W. 2d 664, 666.

[11] *United States vs. Mulcahy*, 155 F. 2d 1002, 1004.

[12] *Ex parte Malley*, 53 A.L.R. 395, 397.

[13] Annotation: 72 A.L.R. 809, citing *Re Scott*, 56 N.W. 1009 and *Ex parte Duncan*, 54 Cal. 75. Our law also recognizes two methods of taking bail: (1) by bond; and (2) by recognizance. Section 1, Rule 114, Rules of Court. "A bail bond is an obligation given by the accused with one or more sureties, with the condition to be void upon the performance by the accused of such acts as he may legally be required to perform. A recognizance is an obligation of record, entered into before some court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual condition in criminal cases being the appearance of the accused for trial." *People vs. Abner*, 87 Phil. 566, 569.

[14] 8 *Am. Jur.* 2d., pp. 824-825.

[15] *Id.*, p. 825; italics supplied. The probability that the accused will abscond justifies courts to increase bail.

Montano vs. Ocampo (Resolution), 49 O.G. No. 5, p. 1855; Sy Guan vs. Amparo, supra. Cf. People vs. Berg, 79 Phil. 842.

[16] Edaño vs. Cea, L-6821, May 10, 1954.

[17] Taylor vs. Waddey, 334 S.W. 2d 733, 736.

[18] 8 Am. Jur, 2d, p. 789.

[19] Section 5 (d), Rule 135, Rules of Court.

[20] Section 6 (16), Article III, Constitution; Section 10, Rule 114, Rules of Court.

[21] Western Surety Co. vs. People, 208 P. 2d 1164, 1166., citing People vs. Pollock; 176 P. 329, and United States w. Lee, 170 F. 613, 614.

[22] Section 10, Rule 124, Rules of Court.

CONCURRING

FERNANDO, J., :

Candor compels the admission that the writer had to overcome serious doubts and hesitancy before concurring in the dismissal of this petition for certiorari. It may be observed parenthetically that such misgivings do not reflect at all on the ably-written opinion of Justice Sanchez, who was most meticulous in his appraisal of the facts and most sympathetic to the claim for constitutional protection. There are unfortunately circumstances, which, to my mind, militate against the actuation of the lower court whose view on the constitutional right to bail hardly merits the fullest approval. I join the Court, however, in the decision arrived at, in view of the categorical assurance in its opinion expressed thus: "We are not to be understood as laying down here specifics in bail fixing, bail approval or bail denial. Discretion, indeed, is with the court called upon to rule on the question of bail. We must stress, however, that where conditions imposed upon a defendant seeking bail would amount to a refusal thereof and render nugatory the constitutional right to bail, we will not hesitate to exercise our supervisory powers to provide the required remedy."

As noted by former Chief Justice Paras in one of the many opinions in *Nava v. Gatmaitan*,^[1] where this Court, in view of the lack of necessary votes, was unable to rule that the suspension of the privilege of the writ of habeas corpus did not carry with it the suspension of the right to bail, fitly categorized such right along with the other rights of the accused as tending "to aid the accused to prove his innocence and obtain acquittal." The then Justice, later Chief Justice, Bengzon, who was with the majority in upholding the continued existence of the right to bail notwithstanding the suspension of the privilege was equally emphatic. Thus: "Give them the assurance that the judiciary, ever mindful of its sacred mission will not, thru faulty cogitation or misplaced devotion, uphold any doubtful claims of Governmental power in diminution of individual rights, but will always cling to the principles uttered long ago by Chief Justice Marshall that when in doubt as to the construction of the Constitution, 'the Courts will favor personal liberty' (Ex parte Burford 3 Cranch .[7 U.S.] Law. Ed. Book 2 at p. 495)."^[2] So was the late Justice Tuason: "To the plea that the security of the State would be jeopardized by the release of the defendants on bail, the answer is that the existence of danger is never a justification for courts to tamper with the

fundamental rights expressly granted by the Constitution. These rights are immutable, inflexible, yielding to no pressure of convenience, expediency, or the so-called 'judicial statemanship.' The legislature itself can not infringe them, and no court conscious of its responsibilities and limitations would do so. If the Bill of Rights are incompatible with stable government and a menace to the Nation, let the Constitution be amended, or abolished. It is trite to say that, while the Constitution stands, the courts of justice as the repository of civil liberty are bound to protect and maintain undiluted individual rights." [3]

I am not insensible to the claim strongly pressed by the prosecuting arm of the government that there has been an abuse of the right to bail and that there are quite a few instances where due to such lapses perpetrators managed to go scot-free. It is indisputable that there is a great public interest in having malefactors apprehended, thereafter tried, and if found guilty, punished according to law. Equally so, it must not be forgotten that the Constitution stands for the proposition that public welfare is best served if the rights of an accused therein guaranteed are accorded due respect. As in so many cases in public law, there is here a need for the reconciliation of ends desirable in themselves, which, at times, may come into conflict and collision. With all due allowance, however, for the undeniable necessity for more effective law enforcement to deter rampant criminality and with full recognition of what Justice Cardozo correctly stressed, that "justice though due to the accused is due to the accuser also," [4] with the courts then, as he stressed, having to keep the balance true, the imperative mandate of the Bill of Rights must be followed to the letter. There is, to repeat, comfort in the thought categorically set forth in the opinion of the court, "Where conditions imposed upon a defendant seeking bail would amount to a refusal thereof and render nugatory the constitutional right to bail, we will not hesitate to exercise our supervisory powers to provide the required remedy." That expression of sentiment commands my fullest concurrence. One last point. On its face, the requirement of a P60,000 bail raises a serious question as to whether there is a violation of the constitutional prohibition against excessive bail. The view of Justice Perfecto in *Lino v. Fugoso*, [5] comes to mind: "It is a fact that the twelve detainees joined the workers' strike in a desperate endeavor to secure a decent living wage. They went into strike because with what they were being paid for their daily labor they had not enough to make both ends meet. At the time of their arrest, they were not even earning the insufficient salary or wage against which they were protesting by means of strike. If those persons were not earning enough to live as decent human beings, and at the time of their detention they were not receiving even the miserable pittance they were complaining of, is it not an insulting joke to require them to raise each P12,000 for bail, an amount, which even we, the members of the Supreme Court, occupying the highest ranks in our judicial system, and receiving the highest salary allowed by law to a judicial officer, could not raise with the urgency required by the situation of a man who is deprived of his personal freedom? "

[1] 90 Phil. 175 (1951).

[2] At p. 195.

[3] At p. 206.

[4] *Snyder v. Massachusetts* (1934) 291 US 97, 122. 577 Phil. 933, 943 (1946).

[5] 77 Phil. 933, 943 (1946), Perfecto, J., concurring.

CONCURRING**PERFECTO, J.,**

What removes the taint of constitutional infirmity is that the bail in this case is not in cash, but a property bond. Considering the rapid increase in value of real estate and the undoubted fact that under the prevailing family relationship, embracing as it does not only the immediate household unit, but distant relations, the probability of an accused languishing in detention even if ultimately proven innocent, is not as great as otherwise it might have been. It is for that reason that I do not deem the amount here excessive and thus violative of a constitutional prescription.

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