P/SR. SUPT. ORLANDO M. MABUTAS, REGIONAL DIRECTOR, PHILIPPINE DRUG ENFORCEMENT AGENCY, METRO MANILA REGIONAL OFFICE, COMPLAINANT, VS. JUDGE NORMA C. PERELLO, PRESIDING JUDGE, RE...

A.M. NO. RTJ-03-1817. June 08, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Subject matters of the present administrative cases are two complaints against respondent Judge Norma C. Perello, Presiding Judge of the Regional Trial Court (Branch 276) of Muntinlupa City.

Admin. Matter No. RTJ-03-1817

This case originated from a letter of Police Senior Supt. Orlando M. Mabutas, Regional Director of the Philippine Drug Enforcement Agency, Metro Manila Regional Office. P/Sr. Supt. Mabutas complained of certain irregularities committed by respondent Judge in the grant of bail to accused Aiza Chona Omadan in Criminal Case No. 03-265. Omadan was charged in an Information, dated April 21, 2003, with Violation of Section 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, for the possession, custody and control of 57.78 grams of Methamphetamine Hydrochloride (shabu), with no bail recommended.

P/Sr. Supt. Mabutas's complaint was based on the memorandum submitted by Police Inspector Darwin S. Butuyan, who stated in his report, as follows:

In the evening of May 5, 2003, a colleague notified him of a scheduled preliminary investigation of Omadan's case on the following day (May 6). When P/Insp. Butuyan, together with PO2 Saturnino Mayonte and PO2 Allan Lising, went to the Office of the City Prosecutor, Assistant City Prosecutor (ACP) Florante E. Tuy merely asked them to sign the minutes of the preliminary investigation. Omadan and her counsel were not around, and the police officers were not furnished with a copy of Omadan's counter-affidavit.

On May 8, 2003, someone handed P/Insp. Butuyan a subpoena for the arraignment of Omadan on May 9, 2003. During the scheduled arraignment, they were surprised when ACP Vicente Francisco called PO2 Mayonte to the witness stand. Apparently, Omadan filed a petition for bail and it was being heard on the same day. PO2 Mayonte and PO2 Lising asked ACP Francisco for a rescheduling of the hearing because they were not prepared to testify but the former declined, saying that it is just a motion for bail. After PO2 Mayonte testified, PO2 Lising asked ACP Francisco to present him as witness but again, the former declined since his testimony would only be corroborative. ACP Francisco also presented two (2) barangay tanods.

On May 12, 2003, P/Insp. Butuyan went to deliver a communiqué to ACP Francisco from P/Sr. Supt. Mabutas requesting that in the event bail was granted, its implementation be held in abeyance so that the police authorities may file the necessary motion, and in order to prevent Omadan from escaping. Since ACP Francisco was not around, they went to Branch 276 to secure a copy of the motion for bail. However, the police officers were

"shocked" to learn that Omadan has already been released on a P1,000,000.00 bail on May 9, 2003, which was a Friday. Court personnel also informed them that they spent overtime work for the processing of the release papers. They asked for a copy of the transcript of stenographic notes of the hearing held on May 9, 2003, but it was not available.

Respondent Judge's Order dated May 9, 2003, granting Omadan's petition for bail, reads in part:

> Clearly, the evidence of guilt is not very strong for the denial of the bail. It was not proven that the object that SPO1 Mayonte allegedly saw wrapped in a tissue paper was indeed methamphetamine hydrochloride. He is not very sure if the specimen was in fact subjected to an analysis to determine what it was. There is also no specifying the quantity of the item.
>
> There also seem to be an irregularity in the service of the search warrant for it was NOT witnessed by two disinterested persons. Admittedly two Barangay Tanods were brought to the residence of accused, but they never witnessed the search because when they arrived the search had already been completed. The wife of the owner of the residence was allegedly found in the house but she was not made to go with the searching team to witness the search. An evaluation of the record of the search, it appears also the search warrant, showed some material defect, because no witness who appeared to have personal knowledge of the illegal activities of the accused and husband, executed an Affidavit before the officer who issued the search warrant. In fact the searching questions were conducted on the applicant but not on the confidential informant, who alone had the personal knowledge of the alleged illegal activities in the vicinity. No deposition was taken of the applicant. Only the applying officers executed an affidavit, yet had no personal knowledge of the crime as they were only told by his confidential informant. No copy of the deposition is attached to the application. Although this court has no jurisdiction to hear the MOTION TO QUASH the search warrant however this fact are [sic] taken into consideration for the petition to bail if only to show the strength or weakness of the prosecution evidence, to ascertain if Prosecution have [sic] a witness who has personal knowledge of the alleged illegal activities of the accused in her home. There is none. Even the Barangay policemen Arturo Villarin, cannot tell with certainty if drugs were indeed found in the residence of the accused.
>
> Bail is therefore allowed in the sum of ONE MILLION PESOS (Php 1,000,000.00) which accused AIZA CHONA OMADAN may post in cash, by property or thru a reputable bonding company, and under the additional condition that her counsel, Atty. GENE CASTILLO QUILAS guarantees her appearance in court whenever so required.
>
> It is SO ORDERED.[1]

Admin. Matter No. RTJ-04-1820

This case proceeded from a letter of Prosecutor Edward M. Togononon of Muntinlupa City, accusing respondent Judge of partiality, serious misconduct in office and gross ignorance of the law, concerning the latter's grant of bail in four criminal cases for Violations of R.A. No. 9165 pending before her.

In Criminal Case No. 03-065, entitled, People of the Philippines vs. Rosemarie Pascual y Mozo @ Rosema, for Violation of Section 5 of R.A. No. 9165, accused Pascual was charged with selling, trading, delivering and giving away to another 0.20 grams of Methamphetamine Hydrochloride (shabu), with no bail recommended.[2] Pascual filed, on February 5, 2003, a motion for bail on the grounds that the quantity of shabu involved is minimal and the imposable penalty is likewise minimal in degree; and that she is nine months pregnant and due to give birth anytime.[3]

On the day of arraignment, February 7, 2003, respondent Judge issued an order granting Pascualï¿½s motion for bail without hearing, which reads:

> The MOTION FOR BAIL filed by Accused through counsel is granted on the reason cited thereat.

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> Accordingly, Accused ROSEMARIE PASCUAL Y MOZO may post her bail in the amount of P200,000.00 in cash or thru a reputable bonding company, or by property bond for her provisional liberty.
>
> It is SO ORDERED.[4]

ACP Francisco filed a motion for reconsideration, arguing that since the crime charged against Pascual is a capital offense, bail is not allowed as a matter of right, and a hearing is indispensable. Respondent Judge denied the motion in her Order dated March 12, 2003, which reads, in part:

> . . .
>
> This Court is immediately appalled and shocked by the thirst for blood of these officials, were selling shabu in the quantity of "0.20 gram", they would put the accused to DEATH. It seems that, to these officials LIFE IMPRISONMENT and DEATH is the only solution to this problem, without considering the intended provision of the law, and the possible dislocation that the death of the accused will cause to his family and even to society itself. The prosecution and some City Officials have distorted the provision of the law by considering shabu as a "dangerous drug," in the category of "opium puppy" (sic) or morphine. They cannot be more wrong!
>
> In the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, Methamphetamine Hydrochloride is NEVER considered as "dangerous drugs" to come under the provision of the first paragraph of Sec. 5, Republic Act No. 9165. The definition of dangerous drugs under Sec. 3, letter J of the said law, specifies those considered as dangerous drugs. Instead Methamphetamine Hydrochloride is considered as a "controlled precursor" or "essential chemical", which is found and listed in No. 7, LIST OF SUBSTANCES in SCHEDULE NO. 111 of the 1971 United Nations Single Convention on Psychotropic Substances. Therefore, Methamphetamine Hydrochloride is a "chemical substance" or psychotropic substance and NOT a "dangerous drug."!
>
> Since the quantity is very much less than a gram of this essential chemical, is punishable with imprisonment of only 12 years, as paragraph 2 of Sec. 5, R.A. 9165 provides. There is no law, statute, or jurisprudence that classifies 12 years imprisonment as a capital punishment, and non-bailable. Only bloodsuckers who thirst for blood will consider death for these offenders for this kind of offense!
>
> Prosecution will probably argue that this drug is considered "dangerous" under Sec. 11, R.A. 9165, but this section does not define what are dangerous drugs, and the term is used generally to encompass all drugs. Still, this section only shows that for possession of certain quantities of "shabu", is punishable with 12 years imprisonment only, NEVER DEATH!
>
> This Court has no quarrel with the Prosecutors if the drugs accused is pushing or found in the custody of accused are of large volume, for then they would really deserve to DIE! Then be richer by several millions, and foster a society of drug abusers yet! But this Court cannot agree with Prosecutors when the quantity that is peddled is not even enough to put body and soul together of accused. Foisting death on these kind of offenders, is death itself to him who imposes such a penalty! This court cannot be that unjust and unfeeling, specially as the law itself does not so allow!
>
> The prosecutors are also reminded that the grant of bail to all offenses is constitutionally guaranteed. Even those punishable with death or capital offenses, only the EXCEPTIONS! It is never the rule.
>
> . . .
>
> Perhaps if these questioning individuals will provide employment to their constituents, the latter will not engage in this kind of trade to survive.[5]

In Criminal Case No. 03-082, entitled, People of the Philippines vs. Rolando Uy y Manata @ Nono, for Violation

of Section 5, paragraph 1 of R.A. No. 9165, accused Uy was charged with selling, trading, delivering and giving away to Philippine National Police (PNP) operatives after a buy-bust operation 0.12 grams of Methamphetamine Hydrochloride (shabu). ACP Romeo B. Senson recommended no bail. Uy filed a petition for bail cum motion to suppress prosecution evidence on February 18, 2003, alleging, among others, that the arrest was illegal as no buy-bust operation happened, and the shabu confiscated was planted on him. Without hearing, respondent Judge granted Uy's petition for bail since the quantity of drug allegedly "pushed" is only 0.12 grams[6] Uy was released on a P200,000.00 bail. The motion for reconsideration filed by ACP Francisco remains unresolved.

The antecedents of Criminal Case No. 03-265 entitled People of the Philippines vs. Aiza Chona Omadan y Chua and John Doe, for Violation of Section 11 of R.A. No. 9165, are set forth and dealt with in Admin. Matter No. RTJ-03-1817.

In Criminal Case No. 03-288 entitled People of the Philippines vs. Mary Jane Regencia y Mozo @ Grace, for Violation of Section 5 of R.A. No. 9165, accused Regencia was charged with selling, delivering, trading and giving away to another 0.07 grams of Methamphetamine Hydrochloride (shabu). Respondent Judge likewise granted Regencia's motion for bail without hearing, on the ground that the quantity of shabu involved is minimal and the imposable penalty is also minimal.[7]

Respondent Judge was required to comment on these two complaints.

In Admin. Matter No. RTJ-03-1817, respondent Judge contends that P/Sr. Supt. Mabutas's charges against her are baseless; that the preliminary investigation conducted on Omadan's case was outside her jurisdiction; that she did not have any hand or influence in ACP Francisco's handling of the hearing on the petition for bail as it is within the latter's control and supervision; that she denies that there was undue haste in the grant of bail in Omadan's favor; and that bail was granted because the prosecution's evidence of Omadan's guilt was not strong.[8]

In Admin. Matter No. RTJ-04-1820, respondent Judge explains that she did not conduct any hearings on the motions/petitions for bail filed in the criminal cases subject of the complaint because the crimes charged are not capital offenses as the quantity of shabu involved therein was minimal. Criminal Case Nos. 03-065, 03-082, and 03-288 all involve selling of less than 5 grams of shabu. Respondent Judge believes that under R.A. No. 9165, shabu is not a dangerous drug but merely a controlled precursor, in which the selling of less than 5 grams is punishable only with imprisonment of 12 years to 20 years. Such being the case, respondent Judge maintains that bail is a matter of right and a hearing is not required.[9]

The two complaints were consolidated and referred to Court of Appeals Associate Justice Jose C. Reyes, Jr. for investigation, report, and recommendation.

After due proceedings, the Investigating Justice submitted his Report and Recommendation, with the following findings and conclusion:

> The charges arose out of the same set of facts and are interrelated and will be discussed together.
>
> Before proceeding further, the investigating justice will first dispose respondent judge's assertion that the complaints should be dismissed outright claiming that where sufficient judicial remedy exists, the filing of administrative complaint is not the proper remedy to correct actions of a judge citing the case of Barbers vs. Laguio, Jr. (351 SCRA 606 [2001])
>
> Anent the charge of partiality and serious misconduct, the investigating justice notes that these particular charges were not touched upon in the testimony of any of the witnesses presented by the complainants. Therefore, the investigating justice finds that no evidence as to partiality nor serious misconduct exists and these charges should be dismissed for lack of evidence.

> The investigating justice will now therefore tackle only the charge of gross ignorance of the law against respondent judge.
>
> A close scrutiny of the said Barbers case shows that it is not applicable in the present administrative complaints because in the said case it was clear that complainants-petitioners were not merely concerned with the alleged act of the judge of rendering an unjust judgment but was also seeking the reversal of the judgment of acquittal. They had even filed an appeal from the judgment therein of respondent judge. Thus, the Supreme Court held:
>
> It has been held that the pendency of an appeal from a questioned judgment renders the filing of administrative charges premature. Where a sufficient judicial remedy exists, the filing of an administrative complaint is not the proper remedy to correct the actions of a judge.
>
> In the present administrative complaints, it was not shown that an appeal or any other proceeding had been filed to reverse the respondent judge's orders granting bail. It had not been shown that the present administrative complaints had any purpose other then seeking administrative sanctions against respondent judge.
>
> Turning now to the merits of the administrative complaints, the primordial issue is: Whether or not there is an ambiguity in the law as to the classification of methamphetamine hydrochloride.
>
> Under Section 3(x) of the R.A. No. 9165 the substance was defined as:
> Methamphetamine Hydrochloride or commonly known as "Shabu," "Ice," "Meth," or by its any other name. – Refers to the drug having such chemical composition, including any of its isomers or derivatives in any form.

It can be noted that nothing in this provision indicates the classification of the substance either as a dangerous or regulated drug.

It is respondent judge's position that "shabu" is not expressly classified as a dangerous drug under Section 5 of R.A. No. 9165 and should therefore be considered merely as a chemical precursor, to wit:

. . .

For clarity, the UN Single Convention was referred to in Section 3 of R.A. No. 9165 in relation to the definitions of dangerous drugs and controlled precursors, to wit:

> (h)
>
> Controlled Precursors and Essential Chemicals. – Include those listed in Tables I and II of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances as enumerated in the attached annex, which is an integral part of this Act.
>
> . . .
>
> (j)
>
> Dangerous Drugs. – Include those listed in the Schedules annexed to the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and in the Schedules annexed to the 1971 Single Convention on Psychotropic Substances as enumerated in the attached annex which is an integral part of this Act.

It should be noted, however, that by the plain wordings of R.A. No. 9165 "dangerous drugs" are not limited to those substances listed in the schedules attached to the 1961 United Nations Single Convention on Narcotic Drugs because of the use of the word "include." That is, there are other substances which may be considered dangerous

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drugs even if not listed in the above-mentioned schedules.

It is also worth noting that under Section 11 of R.A. No. 9165, Methamphetamine Hydrochloride was specifically mentioned as a dangerous drug, to wit:

. . .

(5) 50 grams or more of methamphetamine hydrochloride or "shabu;"

. . .

It is clear, therefore, that the lawmakers intended to classify Methamphetamine Hydrochloride or shabu as a dangerous drug. Moreover, it would be absurd to consider methamphetamine hydrochloride a "dangerous drug" under Section 11 of R.A. No. 9165 and merely a "precursor" under Section 5 of the same law.

In fine, there is no question that methamphetamine hydrochloride is classified as a dangerous drug.

Having made the foregoing findings, the next issue that calls for resolution is the penalty imposable to the criminal cases under consideration. This is necessary in order to determine if the accused are entitled to bail. Under Section 13 of Article III of the 1987 Constitution, an accused shall be entitled to bail as a matter of right unless charged with an offense punishable with a capital penalty.

The Court notes that the criminal cases under consideration can be grouped into two (2): A) Crim. Case No. 03-065 (against Rosemarie Pascual, Crim. Case No. 03-082 (against Rolando Uy), and Crim. Case No. 03-288 (against Mary Jane Regencia), which involve selling, trading, delivering or giving away Methamphetamine Hydrochloride; and B) Crim. Case No. 03-265 (against Aiza Chona Omadan) which involve possession of the said substance.

The investigating justice would first discuss Crim. Case No. 03-265 where the accused was charged with possession of 57.78 grams of Methemphetamine Hydrochloride. Section 11 of R.A. No. 9165 provides that the penalty imposable is life imprisonment to death. Therefore, in the Crim. Case No. 03-265 accused therein is not entitled to bail as a matter of right. Rightly so, a hearing was conducted before the bail was granted.

The investigating justice, after a careful consideration of the evidence presented by the complainants, opines that there is insufficient evidence to support the allegation that bail was hastily granted to accused Aiza Chona Omadan. Therefore, the charge of gross ignorance in relation to this case should be dismissed for lack of factual basis.

The investigating justice will now tackle the other set of cases (Crim. Case No. 03-065; Crim. Case No. 03-082; Crim. Case No. 03-288). Under the law, these are punishable with penalty ranging from life imprisonment to death. Pertinent portions of Section 5 of R.A. No. 9165 reads:

. . .

As held in Managuelod vs. Paclibon, et al. (A.M. No. RTJ-02-1726, March 29, 2004).

> It is imperative that judges be conversant with basic legal principles and possess sufficient proficiency in the law. In offenses punishable by reclusion perpetua or death, the accused has no right to bail when the evidence of guilt is strong. Respondent Judge Go should have known the procedure to be followed when a motion for admission to bail is filed by the accused. Extreme care, not to mention the highest sense of personal integrity, is required of him in granting bail, specially in case where bail is not a matter of right. The fact that the provincial prosecutor interposed no objection to the application for bail by the accused did not relieve respondent judge of the duty to set the motion for bail for hearing. A hearing is of utmost necessity because

> certain guidelines in fixing bail (the nature of the crime, character and reputation of the accused, weight of evidence against him, the probability of the accused appearing at the trial, among other things) call for the presentation of evidence. It was impossible for respondent judge to determine the application of these guidelines in an ex-parte determination of the propriety of Palacol's motion for bail. Thus, for his failure to conduct any hearing on the application for bail, we hold respondent Judge Go guilty of gross ignorance of the law justifying the imposition of the severest disciplinary sanction on him. (Emphasis supplied)

It is clear, therefore, that as to said criminal cases the accused were likewise not entitled to bail as a matter of right, hence, a hearing for the grant of bail should have been conducted. However, in this last instance, no such hearing was conducted.

In fine, respondent judge erred in granting bail to the accused in Crim. Case No. 03-065, Crim. Case No. 03-082, and Crim. Case No. 03-288 without hearing because the crime charge carries with it capital penalty.

As to Crim. Case No. 03-065, Crim. Case No. 03-082, and Crim. Case No. 03-288, the next issue to be resolved is: whether or not the mistake amounted to gross ignorance of the law which would justify an administrative sanction against respondent judge.

Respondent judge, naturally, argued that she cannot be held liable asserting that to be held guilty of gross ignorance, the error must have been gross, deliberate and malicious (Rollo, RTJ-04-1820, p. 74) and in absence of fraud, dishonesty, or corruption that judge cannot be held liable (Rollo, RTJ-04-1820, p. 75).

However, the Supreme Court does not always require the presence of malice to find erring judges liable for gross ignorance.

In the above-cited Managuelod case the Supreme Court held that failure to hold a hearing before granting bail in crimes involving capital punishment constitutes gross ignorance of the law, thus:

> . . . Thus, for his failure to conduct any hearing on the application for bail, we hold respondent Judge Go guilty of gross ignorance of the law justifying the imposition of the severest disciplinary sanction on him.

The same should hold true in the present administrative cases considering that the criminal cases involved drugs, a major problem of the country today.

In conclusion, the investigating justice finds respondent judge guilty of gross ignorance of the law in relation to the granting of bail without hearing in Crim. Case Nos. 03-065, 03-082 and 03-288 and exonerate her as to the charge in relation to Criminal Case No. 03-265.

. . .

The next issue then is the penalty imposable on respondent judge. In Mupas vs. Espanol (A.M. No. RTJ-04-185014, July 14, 2004) the Supreme Court enumerated the proper penalty for gross negligence (sic), thus:

> Under Section 8 of A.M. No. 01-8-10-SC amending Rule 140 of the Rules of Court on the Discipline of Justices and Judges, which took effect on October 1, 2001, gross ignorance of the law is classified as a serious charge which carries with it a penalty of either dismissal from service, suspension or a fine of more than P20,000.00 but not exceeding P40,000.00.[10]

Based on the foregoing, the Investigating Justice made the following recommendation:

> WHEREFORE, in view of the foregoing, it is respectfully recommended that respondent Judge Norma C. Perello be DISMISSED on the ground of gross ignorance of law in relation to the grant of bail in Criminal Case No. 03-065, Criminal Case No. 03-082, Criminal Case No. 03-288.[11]

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The issue in these administrative cases is whether respondent Judge may be administratively held liable for the grant of bail in the particular criminal cases subject of the complaints. As earlier stated, the criminal cases subject of the present administrative complaints all involve violations of R.A. No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

Admin. Matter No. RTJ-03-1817 particularly relates to Criminal Case No. 03-265 (People of the Philippines vs. Aiza Chona Omadan), involving the possession, custody, and control of 57.78 grams of shabu, punishable under Section 11 thereof, which reads:

> SEC. 11. Possession of Dangerous Drugs.-- The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00) shall be imposed upon any person, who unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:
>
> . . .
>
> (5) 50 grams or more of methamphetamine hydrochloride or "shabu;" (Emphasis supplied)
>
> . . .

Under the foregoing provision, possession of 50 grams or more of methamphetamine hydrochloride or shabu is punishable by life imprisonment to death; hence, a capital offense.[12] As such, bail becomes a matter of discretion. In this regard, Rule 114, Sec. 7 of the Rules of Court states:

> No person charged with the capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when the evidence of guilt is strong, regardless of the stage of the criminal prosecution.

This provision is based on Section 13, Article III of the 1987 Constitution, which reads:

> All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

The matter of determining whether or not the evidence is strong is a matter of judicial discretion that remains with the judge.[13] Such discretion must be sound and exercised within reasonable bounds.[14]

Under the present rules, a hearing on an application for bail is mandatory.[15] Whether bail is a matter of right or of discretion, the prosecutor should be given reasonable notice of hearing, or at least his recommendation on the matter must be sought. In case an application for bail is filed, the judge is entrusted to observe the following duties:

> - In all cases, whether bail is a matter of right or discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation;
>
> - Where bail is a matter of discretion, 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;
>
> - Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution; and
>
> - If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond. Otherwise the bail should be denied.[16]

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Based on the above-cited procedure and requirements, after the hearing, the court's order granting or refusing bail must contain a summary of the evidence for the prosecution. A summary is defined as a comprehensive and usually brief abstract or digest of a text or statement. Based on the summary of evidence, the judge formulates his own conclusion on whether such evidence is strong enough to indicate the guilt of the accused.[17]

In this case, respondent Judge complied with the foregoing duties. A hearing was held on the petition; the prosecution was given the opportunity to present its evidence in support of its stance; respondent Judge based her findings on the prosecution's evidence, namely, the testimonies of P02 Saturnino Mayonte and Arturo Villarin; respondent Judge's Order dated May 9, 2003 granting the accused's petition for bail contained a summary of the prosecution's evidence; and since it was her conclusion that the evidence of accused Omadan's guilt is not strong, the petition for bail was granted.[18] Respondent Judge did not violate procedural requirements. Records show that respondent Judge afforded the prosecution ample opportunity to present all the evidence it had and there was no protest from the prosecution that it had been deprived of its right to present against the accused. Thus, the Court does not find any irregularity in the grant of bail in Criminal Case No. 03-265 that would render respondent Judge administratively liable.

It is noted that the other circumstances, complained of in this case, do not relate solely to respondent Judge's acts, but to the prosecution's conduct in handling the case. Thus, P/Insp. Darwin S. Butuyan stated in his report that "there is something wrong in the procedures and circumstances adopted by the Office of the City Prosecutor of Muntinlupa City and Branch 276, RTC, Muntinlupa City in handling the case leading to the granting of bail to accused Aiza Chona Omadan y Chua."[19]

The Court recognizes that the manner in which the strength of an accused's guilt is proven still primarily rests on the prosecution. The prosecutor has the right to control the quantum of evidence and the order of presentation of the witnesses, in support of the denial of bail. After all, all criminal actions are prosecuted under the direction and control of the public prosecutor.[20] It was the prosecution's judgment to limit the presentation of evidence to two witnesses, as it felt that the testimonies of the other witnesses would be merely corroborative. It is beyond respondent Judge's authority to compel the public prosecutor to exercise its discretion in a way respondent Judge deems fit, so long as such exercise of discretion will not defeat the purpose for which the hearing was held, i.e., to determine whether strong evidence of guilt exists such that the accused may not be entitled to bail.

In any event, the complainant in this case had also filed a letter-complaint with the Department of Justice against the concerned public prosecutors.[21] Such matter is best left handled by the Department, and the Court will not interfere on the matter.

Admin. Matter No. RTJ-04-1820, however, portrays an entirely different picture.

In this case, respondent Judge granted bail in Criminal Cases Nos. 03-065, 03-082, and 03-288 without the requisite hearing. In so doing, it was respondent Judge's defense that under R.A. No. 9165, shabu is not a dangerous drug but merely a controlled precursor, in which the selling of less than 5 grams is punishable only with imprisonment of 12 years to 20 years, and as such, bail is a matter of right and a hearing is not required. Respondent Judge argued that:

> In determining whether methamphetamine hydrochloride or "shabu" is indeed classified as a dangerous drug under the said Republic Act, undersigned exhaustively studied the provision of this law and found that in Letter "H," Art. 1, Section 3: Definition of Terms, Methamphetamine Hydrochloride is listed in Table II, No. 12 of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which list is attached annex, an integral part of this Act, Methamphetamine and is listed as a CONTROLLED PRECURSOR or ESSENTIAL CHEMICAL. This is more imperatively classified as a chemical, in Letter "X" of the Definition, Sec. 3, Art. 1, where shabu is considered as "such chemical." Therefore, under the definition

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> by law itself, shabu or methamphetamine hydrochloride is classified as a controlled precursor or essential chemical.
>
> The definition of what are considered as DANGEROUS DRUGS, is (sic) those in Letter "J," Sec. 3, Art. 1 of R.A. 9165, listed in 1961 Singled Convention on Narcotic Drugs, as amended by the 1972 Protocol, which list is again an integral part of this Act. Methamphetamine is NOT one of the enumerations of dangerous drugs. Therefore, the selling or trading of this substance in a quantity less than a gram is punishable with an imprisonment of only twelve (12) years as provided by the second paragraph of Section 5, Article II, is not on capital offense punishable with death or life imprisonment, is bailable.
>
> Section 11, Art. II, of the same Act, treats of POSSESSION "NOT SELLING," where possession of this substance is considered as a capital offense, punishable with death or life imprisonment, only if the accused is in possession of it in the quantity of 50 GRAMS (50 grams), irrespective of the purity of the substance. It becomes a capital offense only if it is in the quantity of fifty grams (50 GRAMS) under No. 5 of Section 11, Art. II. Corollarilly, if it is less than this quantity, possession of methamphetamine hydrochloride is NOT punishable with a capital penalty, hence, bailable! To stress POSSESSION of Methamphetamine Hydrochloride is considered as capital offense punishable with capital penalty if the quantity is 50 GRAMS (50 GRAMS), (Sec. 11, Art. II) while PUSHING of methamphetamine hydrochloride (Paragraph 2, Sec. 5) to be punishable with capital penalty must be in the quantity of FIVE GRAMS (5 GRAMS), (Guidelines for RA 9165).[22]

To justify her granting bail in the three criminal cases, respondent Judge insists that she did so because of her belief that methamphetamine hydrochloride or shabu is merely a precursor and therefore the sale thereof is not a capital offense. This opinion is blatantly erroneous. One need not even go beyond the four corners of R.A. No. 9165 to see respondent Judge's palpable error in the application of the law.

Respondent Judge need not "exhaustively" study R.A. No. 9165, as she asserted, to determine the nature of methamphetamine hydrochloride. A plain reading of the law would immediately show that methamphetamine hydrochloride is a dangerous drug and not a controlled precursor. If only respondent Judge prudently went over the pertinent provisions of R.A. No. 9165, particularly Section 3, items (h) and (j), and properly made the corresponding reference to the schedules and tables annexed thereto, she would have easily ascertained that methamphetamine hydrochloride is listed in the 1971 UN Single Convention on Psychotropic Substances, which are considered dangerous drugs. It is not listed in the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, as respondent Judge stated.[23]

Dangerous Drugs are defined by Section 3, paragraph (j) of R.A. No. 9165, as including those in the Schedules listed annexed to the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and in the Schedules annexed to the 1971 UN Single Convention on Psychotropic Substances, which were made an integral part of R.A. No. 9165.

Under the foregoing section, dangerous drugs are classified into: (1) narcotic drugs, as listed in the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol; and (2) psychotropic substances, as listed in the 1971 UN Single Convention on Psychotropic Substances.

For purposes of this case, the list of substances in Schedule II of the 1971 UN Single Convention of Psychotropic Substances is hereby reproduced, to wit:

LIST OF SUBSTANCES IN SCHEDULE II

1. AMFETAMINE (AMPHETAMINE)

2. DEXAMFETAMINE (DEXAMPHETAMINE)

3. FENETYLLINE DRONABINOL[?]

4. LEVAMFETAMINE

5. LEVOMETHAMPHETAMINE

6. MECLOQUALONE

7. METAMFETAMINE
(METHAMPHETAMINE)

8. METAMFETAMINE RACEMATE

9. METHAQUALONE

10.METHYLPHE NIDATE

11.PHENCYCLIDINE (PCP)

12.PHENMETRAZINE

13.SECOBARBITAL

14.DRONABINOL (delta-9-tetrahydro-cannabinol and its stereochemical variants)

15.ZIPEPROL

16.2C-B (4-bromo-2,5-dimethoxyphenethylamine)

It clearly shows that methamphetamine is a psychotropic substance, or a dangerous drug.

On the other hand, under Section 3, paragraph (h) of R.A. No. 9165, controlled precursors and essential chemicals, refer to those listed in Tables I and II of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which were likewise made integral part of R.A. No. 9165, to wit:

TABLE I

TABLE II

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1. ACETIC ANHYDRIDE 1. ACETONE

2. N-ACETYLANTHRANILIC ACID 2. ANTHRANILIC ACID

3. EPHEDRIN 3. ETHYL ETHER

4. ERGOMETRINE 4. YDROCHLORIC ACID

5. ERGOTAMINE 5. METHYL ETHYL KETONE

6. ISOSAFROLE 6.PHENYLACETIC ACID

7. LYSERGIC ACID 7. PIPERIDINE

8.3,4-METHYLENEDIOXYPHENYL-
2 PROPANONE 8. SULPHURIC ACID

9. NOREPHEDRINE 9. TOLUENE

10. 1-PHENYL-2-PROPANONE

11. PIPERONAL

12. POTASSIUM PERMANGANATE

13. PSEUDOEPHEDRINE

14. SAFROLE

It readily reveals that methamphetamine is not one of those listed as controlled precursor or essential chemical.

Given the foregoing, methamphetamine hydrochloride is a dangerous drug, and not a controlled precursor or essential chemical. That "methamphetamine" and not "methamphetamine hydrochloride" is the term specifically listed in Schedule II of the 1971 UN Single Convention of Psychotropic Substances does not detract from the fact that it is a dangerous drug. Section 3, paragraph (x) of R.A. No. 9165, states that methamphetamine hydrochloride is a drug having such chemical composition, including any of its isomers or derivatives in any form.

This is further strongly manifest in Section 11 of R.A. No. 9165, wherein it is specifically provided that the possession of dangerous drugs, such as methamphetamine hydrochloride or shabu, is punishable with life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00), if the quantity thereof is 50 grams or more. It would be absurd, to say the least, that Section 11 of R.A. No. 9165 would qualify methamphetamine hydrochloride as a dangerous drug, while Section 5 of the same law, penalizing the sale thereof, would treat it as a controlled precursor.

Had respondent Judge been more circumspect in going over the pertinent provisions of R.A. No. 9165, she would certainly arrive at the same conclusion. It does not even take an interpretation of the law but a plain and simple reading thereof. Furthermore, had respondent judge kept herself abreast of jurisprudence and decisions of the Court,[24] she would have been apprised that in all the hundreds and hundreds of cases[25] decided by the Court, methamphetamine hydrochloride or shabu had always been considered as a dangerous drug.

Given that methamphetamine hydrochloride is a dangerous drug, the applicable provision in Criminal Case Nos. 03-065, 03-082, and 03-288 subject of Admin. Matter No. RTJ-04-1820, is Section 5, paragraph 1 of R.A. No. 9165, which reads:

> SECTION 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. – The penalty of life imprisonment to death and fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

Regardless of quantity, the sale, trade, administration, dispensation, delivery, distribution and transportation of shabu is punishable by life imprisonment to death. Being a capital offense, it is incumbent upon respondent Judge to hold a hearing on the petitions/motions for bail filed by the accused therein to determine whether evidence of guilt is strong. To grant an application for bail and fix the amount thereof without a hearing duly called for the purpose of determining whether the evidence of guilt is strong constitutes gross ignorance or incompetence whose grossness cannot be excused by a claim of good faith or excusable negligence.[26]

In Gallardo vs. Tabamo,[27] the Court rejected the defense that the judge's failure to apply the clear provisions of the law is merely an error of judgment, and the judge was held administratively liable for gross ignorance of the law where the applicable legal provisions are crystal clear and need no interpretation.

Moreover, such gross ignorance of law is in violation of Rule 3.01 of the Code of Judicial Conduct, which states that "a judge shall be faithful to the law and maintain professional competence."

> The indispensable nature of a bail hearing in petitions for bail has always been ardently and indefatigably stressed by the Court. The Code of Judicial Conduct enjoins judges to be faithful to the law and maintain professional competence. A judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles and be aware of well-settled authoritative doctrines. He should strive for excellence exceeded only by his passion for truth, to the end that he be the personification of justice and the Rule of Law.[28]

Although judges cannot be held to account or answer criminally, civilly or administratively for every erroneous judgment or decision rendered by him in good faith, it is imperative that they should have basic knowledge of the law.[29]

Even if a judge acted in good faith but his ignorance is so gross, he should be held administratively liable.[30]

Under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, which took effect on October 1, 2001, gross ignorance of the law is classified as a serious charge and is now punishable with severe sanctions, to wit:

> Sec. 11. Sanctions. – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
>
> - Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits.
>
> - Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

- A fine of more than P20,000.00 but not exceeding P40,000.00.

In this case, the Investigating Justice recommended that respondent Judge be dismissed from the service. The Court finds such penalty to be too harsh. In similar cases,[31] the Court imposed a fine on the respondents therein for gross ignorance of the law for having granted bail to the accused without notice and hearing. However, the Court takes judicial notice that this is not the first time that respondent Judge was administratively fined. In A.M. No. RTJ-02-1686,[32] a fine of P5,000.00 and a reprimand was imposed on respondent Judge for dereliction of duty for her failure to act on Civil Case No. 9-138 for three years. In A.M. No. RTJ-04-1846,[33] respondent Judge was held administratively liable for gross ignorance of the law, grave misconduct and oppression for the delay of almost nine (9) months in the transmittal of the records of Civil Case No. 01-268 to the Court of Appeals, and was fined P20,000.00. Thus, the Court is imposing a penalty more severe than a fine. Suspension from office for six (6) months in Admin. Matter No. RTJ-04-1820, excluding Criminal Case No. 03-265 (People of the Philippines vs. Aiza Chona Omadan), is sufficient and reasonable.

The Office of the Court Administrator (OCA) also notes, in its Memorandum dated November 22, 2002, that respondent Judge caused the release from the National Bilibid Prison of several persons convicted of violation of the drugs law by granting the petitions for habeas corpus filed in her court, i.e., Spl. Proc. Nos. 02-002, 02-008, 02-10, 98-023 and 98-048. The OCA further stated that in Spl. Proc. Nos. 98-023 and 98-048, respondent Judge granted the petitions without determining the veracity of the allegations therein; without any material evidence in support of her findings and conclusion; and that at the time the petitions were granted, an appeal from the convictions in these two cases is pending before the Court (G. R. Nos. 131622-23). Thus, the OCA recommends that an investigation, report, and recommendation on these two cases be made, and that it be authorized to conduct an audit on all the petitions for habeas corpus in all the courts of the Regional Trial Court of Muntinlupa City from 1998 to the present.[34]

WHEREFORE, judgment is hereby rendered:

(1) In Admin. Matter No. RTJ-03-1817, DISMISSING the complaint against respondent Judge; and,

(2) In Admin. Matter No. RTJ-04-1820, finding respondent Judge Norma C. Perello, Presiding Judge of the Regional Trial Court (Branch 276) of Muntinlupa City GUILTY of gross ignorance of law, and she is hereby SUSPENDED for Six (6) Months, with warning that a repetition of similar acts shall be dealt with more severely.

AS TO OTHER MATTERS:

(a) The Court ORDERS the Office of the Court Administrator to initiate the appropriate complaint for grave misconduct and/or gross ignorance of the law against respondent Judge, insofar as Spl. Proc. Nos. 02-002, 02-008, 02-10, 98-023 and 98-048 are concerned; and to conduct preliminary investigation and submit report thereon within ninety (90) days from notice hereof.

(b) The Office of the Court Administrator is AUTHORIZED to conduct an audit and submit a report within ninety (90) days from notice hereof, on all the petitions for habeas corpus in all the courts of the Regional Trial Court of Muntinlupa City from 1998 to present.

SO ORDERED.

Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.
Puno, (Chairman), J., on official leave.

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[1] Rollo, A.M. No. RTJ-03-1817, pp. 67-68.

[2] Rollo, A.M. No. RTJ-04-1820, p. 22.

[3] Id., p. 23.

[4] Id., p. 27.

[5] Id., pp. 35-36.

[6] Id., p. 41.

[7] Id., pp. 59, 60.

[8] Rollo, A.M. No. RTJ-03-1817, pp. 229-238.

[9] Rollo, A.M. No. RTJ-04-1820, pp. 3-4.

[10] Report and Recommendation, pp. 27-40.

[11] Id., p. 40.

[12] Rule 114, Section 6 of the Revised Rules of Criminal Procedure, as amended, defines a capital offense as an offense which, under the law existing at the time of its commission and of the application for admission to bail, may be punished with death.

[13] Jamora vs. Bersales, A.M. No. MTJ-04-1529, December 16, 2004.

[14] Basco vs. Rapatalo, A.M. No. RTJ-96-1335, March 5, 1997, 269 SCRA 220.

[15] Ruiz vs. Beldia, A.M. No. RTJ-02-1731, February 16, 2005.

[16] Te vs. Perez, A.M. No. MTJ-00-1286, January 21, 2002, 374 SCRA 130.

[17] Docena-Caspe vs. Bugtas, A.M. No. RTJ- 03-1767, March 28, 2003, 400 SCRA 37.

[18] Rollo, A.M. No. RTJ-03-1817, pp. 66-68.

[19] Id., p. 206.

[20] Rule 110, Section 5, Revised Rules of Criminal Procedure, as amended by A.M. No. 02-2-07-SC.

[21] TSN, July 16, 2004, Senior Superintendent Orlando Mabutas, p. 80.

[22] Rollo, A.M. No. RTJ-03-1817, pp. 290-291.

[23] Rollo, A.M. No. RTJ-03-1817, p. 290.

[24] Lim vs. Dumlao, A.M. No. MTJ-04-1556, March 31, 2005.

[25] People vs. Tang Wai Lan, G.R. Nos. 118736-37, July 23, 1997, 276 SCRA 24; People vs. Macalaba, 394 SCRA 478, G.R. Nos. 146284-86, January 20, 2003, 395 SCRA 461; People vs. Canton, G.R. No. 148825, December 27, 2002, 394 SCRA 478; People vs. Corpus, G.R. No. 148919, December 17, 2002, 394 SCRA 191; People vs. Medina, G.R. No. 127157, July 10, 1998, 292 SCRA 436.

[26] Ypil vs. Vilo, A.M. No. MTJ-02-1457, August 11, 2004, 436 SCRA 62.

[27] A.M. No. RTJ-92-881, June 22, 1994.

[28] Docena-Caspe case, supra.

[29] Guyud vs. Pine, A.M. No. MTJ-03-1469, January 13, 2003, 395 SCRA 26.

[30] Gil vs. Lopez, Jr., A.M. No. MTJ-02-1453, April 29, 2003, 401 SCRA 635, 643.

[31] Docena-Caspe vs. Bugtas, A.M. No. RTJ- 03-1767, March 28, 2003, 400 SCRA 37; Manonggiring vs. Ibrahim, A.M. No. RTJ-01-1663, November 15, 2002, 391 SCRA 673; Panganiban vs. Cupin-Tesorero, A.M. No. RTJ-1454, August 27, 2002, 388 SCRA 44; Tabao vs. Barataman, A.M. No. MTJ-01-1384, April 11, 2002, 380 SCRA 396; Layola vs. Gabo, Jr., A.M. No. RTJ-1524, January 26, 2000, 323 SCRA 348.

[32] May 7, 2004.

[33] January 31, 2005.

[34] Rollo, Admin. Matter No. RTJ-04-1820, p. 11.

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