

FRANCISCO VIRTOUSO, JR., PETITIONER, VS. MUNICIPAL JUDGE OF MARIVELES, BATAAN, AND CHIEF OF POLICE OF MARIVELES, BATAAN, RESPONDENTS.*G.R. No. L-47841. March 21, 1978*

Ponente: FERNANDO, J.

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Petitioner Francisco Virtouso, Jr., who filed an application for the writ of habeas corpus on February 23, 1978, premised his plea for liberty primarily on the ground that the preliminary examination which led to the issuance of a warrant of arrest against him was a useless formality as respondent Municipal Judge of Mariveles, Bataan,[1] failed to meet the strict standard required by the Constitution to ascertain whether there was a probable cause.[2] He likewise alleged that aside from the constitutional infirmity that tainted the procedure followed in the preliminary examination, the bail imposed was clearly excessive.[3] It was in the amount of P16,000.00, the alleged robbery of a TV set being imputed to petitioner. As prayed for, the Court issued a writ of habeas corpus, returnable to it on Wednesday, March 15, 1978. Respondent Judge, in his return filed on March 8, 1978, justified the issuance of the warrant of arrest, alleging that there was no impropriety in the way the preliminary examination was conducted. As to the excessive character of the bail, he asserted that while it was fixed in accordance with the Revised Bail Bond Guide issued by the Executive Judge of Bataan in 1977, he nevertheless reduced the amount to P8,000.00.

Petitioner's counsel and respondent Municipal Judge orally argued the matter on March 15, 1978. In the course of intensive questioning by the members of this Court, especially Justices Barredo, Aquino and Santos, it was ascertained that petitioner is a seventeen-year old minor entitled to the protection and benefits of the Child and Youth Welfare Code,[4] a youthful offender being defined therein as "one who is over nine years but under eighteen years of age at the time of the commission of the offense." [5] As such, he could be provisionally released on recognizance in the discretion of a court.[6] Accordingly, after the hearing, the Court issued the following resolution: "Acting on the verbal petition of counsel for petitioner Francisco Virtouso, Jr., the Court Resolved pursuant to section 191 of Presidential Decree No. 603, petitioner being a 17-year old minor, to [order] the release of the petitioner on the recognizance of his parents Francisco Virtouso, Sr. and Manuela Virtouso and his counsel, Atty. Guillermo B. Bandonil, who, in open court, agreed to act in such capacity, without prejudice to further proceedings in a pending case against petitioner being taken in accordance with law." [7] This Court should, whenever appropriate, give vitality and force to the Youth and Welfare Code, which is an implementation of this specific constitutional mandate: "The State recognizes the vital role of the youth in nation-building and shall promote their physical, intellectual, and social wellbeing." [8]

Thus was the petition resolved, without the need of passing upon the issue of whether or not the procedure by respondent Judge in ascertaining the existence of probable cause was constitutionally deficient. Nonetheless, it must ever be kept in mind by occupants of the bench that they should always be on the alert lest by sloth or indifference or due to the economic or social standing of the alleged offended party, as was intimated in this

petition, the rights of an accused, instead of being honored, are disregarded. There is much more importance attached to the immunities of an individual during a period of martial law, which in itself is a creature of the Constitution as a mode of coping with grave emergency situations. It is equally pertinent to state that there should be fealty to the constitutional ban against excessive bail being required. There is relevance to this excerpt from *De la Camara v. Enage*:^[9] "Where, however, the right to bail exists, it should not be rendered nugatory by requiring a sum that is excessive. So the Constitution commands. It is understandable why. If there were no such prohibition, the right to bail becomes meaningless. It would have been more forthright if no mention of such a guarantee were found in the fundamental law. It is not to be lost sight of that the United States Constitution limits itself to a prohibition against excessive bail. As construed in the latest American decision, 'the sole permissible function of money bail is to assure the accused's presence at trial, and declared that "bail set at a higher figure than an amount reasonably calculated to fulfill this purpose is 'excessive' under the Eighth Amendment.'"^[10]

WHEREFORE, the petition is granted in accordance with the terms of the Resolution of this Court of March 15, 1978 as set forth above.

Barredo, Antonio, Aquino, Concepcion, Jr., and Santos, JJ., concur.

[1] The Chief of Police of Mariveles, Bataan was named as the other respondent.

[2] According to Article IV, Section 3 of the Constitution: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

[3] According to Article IV, Section 18 of the Constitution: "All persons, except those charged with capital offenses when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties. Excessive bail shall not be required."

[4] Presidential Decree 603 (1974).

[5] The Child and Youth Welfare Code, Article 189, as amended by Presidential Decree No. 1179 (1977).

[6] *Ibid*, Article 191.

[7] Resolution of March 15, 1978.

[8] Article II, Section 5 of the Constitution.

[9] L-32951-2, September 17, 1971, 41 SCRA 1.

[10] *Ibid*, 8.

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