

SY GUAN (ALIAS LIM HONG), PETITIONER, VS. RAFAEL AMPARO, JUDGE OF FIRST INSTANCE OF MANILA, RESPONDENT.

G.R. No. L-1771. December 04, 1947

Ponente: TUASON, J.

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TUASON, J.:

Sy Guan alias Lim Hong is under prosecution with two others for visiting an opium den. The case is now pending in the Court of First Instance of Manila, to which the accused appealed from a sentence of one month and one day of imprisonment imposed by the municipal court. Having failed to appear in the Court of First Instance when the cause was called for trial, Sy Guan's bond, for P300, was ordered forfeited and a warrant for his arrest was issued. Upon being rearrested, this prisoner offered to put up a new bond. The offer was rejected by the Honorable Rafael Amparo, Judge, "in view of the fact that Sy Guan has heretofore jumped his bail."

The upshot is the present petition for certiorari, alleging lack or excess of jurisdiction. The appropriate remedy is mandamus, and, as the application contains sufficient allegations essential in a petition of this character, we shall consider this proceeding as one to compel the respondent judge to admit the petitioner to bail.

The petitioner denies that he fled or avoided going to trial. He alleges misunderstanding on his part and change of address as the cause of his nonappearance. The point is unimportant. Assuming for the sake of this case that the petitioner purposely "jumped" his bail, that fact does not operate as a forfeiture of his right to temporary liberty. Except where bail is a matter of right, irrespective of such circumstance the breach of a prior bond is a compelling reason for the refusal of bail in the same cause. But where bail is a matter of right and prior absconding and forfeiture is not excepted from such right bail must be allowed irrespective of such circumstance. (8 C. J. S., 77; Rowan vs. Randolph, 268 Fed., 527.)

Bail before conviction is a constitutional right of an accused, except in prosecutions for capital offenses where the proof of guilt is strong. (Article III, section 1, paragraph 16, Philippine Constitution.) Other than this, the Constitution makes no exceptions. The existence of high degree of probability that the defendant will abscond confers upon the court no greater discretion than to increase the bond to such an amount as would reasonably tend to assure the presence of the defendant when it is wanted, such amount to be subject, of course, to the other provision of the same section and paragraph cited, that excessive bail shall not be required."

It is ordered that the petitioner be released upon filing a new bond with sufficient sureties, without special judgment as to costs.

Moran, C.J., Feria, Pablo, Perfecto, Hilado, and Bengzon, JJ., concur.

PARAS, J., concurs in the result.

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