

ALEJANDRO C. SIAZON, SENIOR STATE PROSECUTOR, DEPARTMENT OF JUSTICE, PETITIONER, VS. HON. PRESIDING JUDGE OF THE CIRCUIT CRIMINAL COURT, 16TH JUDICIAL DISTRICT, DAVAO CITY, JOSE...

G.R. Nos. L-34156-58. October 29, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Challenged as a grave abuse of discretion is an order of respondent Judge Constante E. Evangelista, presiding the Circuit Criminal Court, 16th Judicial District, Davao City, issued on September 23, 1971 in connection with the petition for bail of respondents Jose Escribano and Renan Padilla, accused with two others who are still at large, in three murder cases pending in said Court and numbered CCC-XVI-9-CC, CCC-XVI-10-CC and CCC-XVI-12-CC, respectively. Also originally accused with them was one Angelico Najar, who was subsequently discharged upon motion of the prosecution so that he could be utilized as State witness.

At the outset it should be mentioned that the instant petition is formally defective in that the petitioner appears to be the State Prosecutor handling the case below instead of the People of the Philippines, who should properly be represented in this proceeding by the Solicitor General. The defect being merely formal, however, we have chosen to overlook it in the interest of a speedy disposition of this case, involving as it does a question of some urgency.

The order sought to be reviewed and set aside, which contains a concise statement of what transpired before the respondent Court, reads as follows:

"This is an urgent supplementary petition for bail dated September 20, 1971, filed by the accused thru counsel, wherein it is prayed that the prosecution be ordered to close its evidence in support of its opposition to the applications for bail on September 23, 1971, or, in the alternative, that it be ordered to present the state witness Angelico Najar on said date. The prosecution filed its opposition to said supplementary petition.

At the outset, let it be stated that after the arraignment of the accused and before the commencement of the trial, the applications for bail, dated February 8 and July 2, 1971, were heard. After hearing both parties and with the announcement made by the Fiscal that he has between 40 and 50 witnesses to present, the Court ruled and ordered a joint hearing of the cases on the merits and of the applications for bail. On this same occasion the Court also considered the motion filed by the prosecution to discharge the defendant Angelico Najar. Without any objection on the part of the defense, said motion to discharge was granted and accused Najar was discharged to become state witness pursuant to Sec. 11, Rule 119 of the Rules of Court.

As the trial progressed, with the prosecution presenting several witnesses whose testimonies have not established evidence directly linking the accused Escribano and Padilla to the conspiracy alleged in the informations in these cases, the defense on August 2, 1971 filed an urgent motion for the reconsideration of the order given in open Court ordering a joint hearing of the cases on the merits and of the applications for bail, to which the prosecution also filed its opposition. After hearing the arguments of both parties and realizing that it should give paramount importance to the constitutional provision regarding the right to bail,

specially before conviction, and considering the announcement of the prosecution that it has about 50 witnesses to present, and considering further that this Court has also to travel to other provinces to try other cases, the Court reconsidered its previous order and ordered that the applications for bail be first heard to which the prosecution gave its assent.

Going now to the urgent motion under consideration, after hearing the arguments of both parties and going over the authorities cited by them in support of their respective contentions, it is the opinion of the Court that the only principal issue in this matter is whether or not a proceeding in an application for bail is still summary in nature as it was under the old rule, and whether or not we should give meaning to the spirit of the constitutional provision regarding the right to bail. The Court takes the stand that this proceeding is still summary in nature and that the Court has the power to limit, in the exercise of wise discretion, the number of witnesses to be presented if in its judgment it can foresee that said right to bail may be defeated due to an unnecessary delay in the presentation of witnesses showing strong evidence of guilt. While it is true that the Fiscal has control over the presentation of evidence as he deems should fit the right of the accused to know whether he is entitled to bail within a reasonable time should not be overlooked. The prosecution has already presented some 27 witnesses but their testimonies, in the opinion of the Court, have not established evidence directly linking the accused to the conspiracy on the basis of which the Court can determine whether strong evidence of guilt exists or not. The defense has manifested that accused Jose Escribano is a candidate for Mayor of Tacurong Cotabato and should be given some special because of the proximity of the coming local elections. This matter of the accused being a candidate is only incidental and the Court refrains from making any comment of whether to consider it as a special circumstance or not. The main basis upon which the Court issues this order is simple and not compartmentalized justice.

"IN VIEW OF THE FOREGOING, the Court hereby orders the prosecution to present its witness Angelico Najar during the next scheduled dates of hearing on September 30 and October 1, 1971, and if it fails to do so without justifiable cause the Court will be compelled to declare the evidence already presented closed and order the defense to present its evidence only in so far as this bail proceedings is concerned."

The petitioner charges the respondent Court with having gravely abused its discretion in interfering with what he submits is the right of the prosecution to present as many witnesses as it considers necessary, and in the order it chooses to do so, in order to show that the evidence of the guilt of the accused is strong, in support of its opposition to their petition for bail. Specifically, the petitioner states that aside from the 27 prosecution witnesses he had already presented over a period of three months since the hearing on the petition for bail started on July 2, 1971, he intends to present many more - some 13 of them* - before he calls Angelico Najar to the stand; and that since the testimonies of all these 40 witnesses are circumstantial and corroborative in nature and are intended to establish a basis for the testimony to be given by Angelico Najar, who is the only one who can testify directly as to the connection of the accused to the offenses charged, all the said witnesses should be presented before Najar himself is called.

The issue, as stated by the respondent Court in the order now sought to be set aside, is "whether or not a proceeding in an application for bail is still summary in nature as it was under the old rule.... and whether or not the court has the power to limit, in the exercise of wise discretion, the number of witnesses to be presented if in its judgment it can fore-see that said right to bail may be defeated due to an unnecessary delay in the presentation of witnesses showing strong evidence of guilt."

The respondent Judge in effect ruled on both questions in the affirmative. The petitioner contends that the ruling is erroneous and constitutes a grave abuse of discretion in this case.

As a general proposition, all persons shall before conviction be bailable except when the charge is a capital offense and the evidence of guilt is strong.[1] At the hearing of the application for bail the burden of showing

that the case falls within the exception is on the prosecution, according to Section 7, Rule 114 of the Rules of Court. The determination of whether or not the evidence of guilt is strong is a matter of judicial discretion, which in the very nature of things may rightly be exercised only after the evidence is submitted to the court at the hearing.[2] Neither under the old nor under the new Rules is there any specific provision defining what kind of hearing it should be, but in the two cases cited at the footnote hereof it was stated that the hearing should be summary or otherwise in the discretion of the court. "By 'summary hearing,' this Court added, 'we mean such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is merely to determine the weight of the evidence for purposes of bail. On such hearing, the court 'does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted.' (8 C.J.S. 93,94.) The course of the inquiry may be left to the discretion of the court which may confine itself to receiving such evidence as has reference to substantial matters, avoiding unnecessary thoroughness in the examination and cross-examination of witnesses and reducing to a reasonable minimum at the amount of corroboration particularly on details that are not essential to the purposes of the hearing."

The petitioner submits that the nature of the hearing on a petition for bail has been changed and that it is now no longer summary in view of the addition to the former Section 7, Rule 110, which now appears as Section 7, Rule 114, of the following provision:

"SECTION 7. Capital offenses - Burden of proof. -

x x x

"The evidence presented during such hearing in the Court of First Instance shall be considered automatically re-produced at the trial, without need of retaking the same; but, upon motion of either party, the Court may recall any witness for additional examination unless the witness is dead, outside the Philippines or otherwise unable to testify."

We do not see that the addition of the provision aforequoted has materially changed the nature of the hearing on a petition for bail to the extent of depriving the Court of its discretion to confine the evidence to the extent necessary for the proper determination of the question of whether or not the evidence of guilt is strong. The only change that has been introduced is that such evidence shall be considered automatically reproduced at the trial in order to avoid unnecessary repetition. The proviso that any witness may be recalled at the trial for additional examination underscores, if anything, the difference between the hearing for purposes of the petition for bail and the trial on the merits. This is as it should be, because one has for its purpose, from the standpoint of the prosecution, to show that strong evidence of guilt exists while the other contemplates proof beyond reasonable doubt.

After going over the pleadings before Us and their accompanying annexes We fail to find any grave abuse of discretion committed by the respondent Judge. The prosecution had had three months since the hearing started until the questioned order was issued and had called 27 witnesses just to lay a sufficient corroborative basis for the testimony of its principal witness, Angelico Najar. The plea that this witness will reveal the names of persons who have some knowledge of circumstances which tend to connect the two accused with the crimes and who presumably will also be called to testify, and whose willingness to do so may thereby be adversely influenced by such revelation, does not appear to be convincing, since the record of the cases below already contains the testimony which Najar gave at the preliminary investigation, aside from his three sworn statements consisting of 16 pages typed single-space in question and answer form.

The right of the prosecution to control the quantum of evidence and the order of presentation of the witnesses, while not to be disregarded, must nevertheless be equated with the purpose of the hearing, which is to determine whether the accused falls within the exception to the general rule that he is constitutionally entitled to bail before conviction. To allow the prosecution to conduct the hearing as if it were a full-dress trial on the merits would defeat the purpose of the proceeding.

In view of the foregoing, the petitions is dismissed and the temporary restraining order issued by this Court is lifted, with instructions to the respondent Court to resume the hearing forthwith for the presentation of Angelico Najar as witness for the prosecution, without prejudice to said Court's allowing, in the exercise of its discretion, the presentation of such other prosecution witnesses as it may deem advisable, in the interests of justice.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Castro, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.
Teehankee, J., files a separate concurrence.

* Per verbal manifestation of petitioner at the hearing of the instant petition.

[1] ART. III, Section 1, par. 16, of the Constitution.

[2] *Herras Teehankee v. Director of Prisons*, 76 Phil. 756; *Ocampo v. Bernabe*, 77 Phil., 55.

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