

JUSTICE SERAFIN R. CUEVAS, SUBSTITUTED BY ARTEMIO G. TUQUERO IN HIS CAPACITY AS SECRETARY OF JUSTICE, PETITIONER, VS. JUAN ANTONIO MUÑOZ, RESPONDENT.

G.R. No. 140520. December 18, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals, dated November 9, 1999, directing the immediate release of respondent Juan Antonio Muñoz from the custody of law upon finding the Order[2] of provisional arrest dated September 20, 1999 issued by Branch 19 of the Regional Trial Court of Manila to be null and void.

The antecedent facts:

On August 23, 1997, the Hong Kong Magistrate's Court at Eastern Magistracy issued a warrant for the arrest of respondent for seven (7) counts of accepting an advantage as an agent contrary to Section 9(1)(a) of the Prevention of Bribery Ordinance, Cap. 201 of Hong Kong, and seven (7) counts of conspiracy to defraud, contrary to the common law of Hong Kong.[3] Said warrant remains in full force and effect up to the present time.[4]

On September 13, 1999, the Philippine Department of Justice (hereafter, "Philippine DOJ") received a request for the provisional arrest of the respondent from the Mutual Legal Assistance Unit, International Law Division of the Hong Kong Department of Justice (hereafter, "Hong Kong DOJ") [5] pursuant to Article 11(1) of the "Agreement Between The Government Of The Republic Of The Philippines And The Government Of Hong Kong For The Surrender Of Accused And Convicted Persons" (hereafter, "RP-Hong Kong Extradition Agreement"). [6] The Philippine DOJ forwarded the request for provisional arrest to the Anti-Graft Division of the National Bureau of Investigation (NBI).

On September 17, 1999, for and in behalf of the government of Hong Kong, the NBI filed an application for the provisional arrest of respondent with the Regional Trial Court (RTC) of Manila.

On September 20, 1999, Branch 19 of the RTC of Manila issued an Order granting the application for provisional arrest and issuing the corresponding Order of Arrest.[7]

On September 23, 1999, respondent was arrested pursuant to the said order, and is currently detained at the NBI detention cell.[8]

On October 14, 1999, respondent filed with the Court of Appeals, a petition for certiorari, prohibition and mandamus with application for preliminary mandatory injunction and/or writ of habeas corpus assailing the validity of the Order of Arrest. The Court of Appeals rendered a decision declaring the Order of Arrest null and void on the following grounds:

(1)

that there was no urgency to warrant the request for provisional arrest under Article 11(1) of the RP-Hong Kong Extradition Agreement;[9]

(2)

that the request for provisional arrest and the accompanying warrant of arrest and summary of facts were unauthenticated and mere facsimile copies which are insufficient to form a basis for the issuance of the Order of Arrest;[10]

(3)

that the twenty (20) day period for provisional arrest under Section 20(d) of Presidential Decree No. 1069 otherwise known as the Philippine Extradition Law, was not amended by Article 11(3) of the RP-Hong Kong Extradition Agreement which provides for a forty-five (45) day period for provisional arrest;[11]

(4)

that the Order of Arrest was issued without the Judge having personally determined the existence of probable cause;[12] and

(5)

that the requirement of dual criminality under Section 3(a) of P.D. No. 1069 has not been satisfied as the crimes for which respondent is wanted in Hong Kong, namely accepting an advantage as an agent and conspiracy to commit fraud, are not punishable by Philippine laws.[13]

Thus, petitioner Justice Serafin R. Cuevas, in his capacity as the Secretary of the Department of Justice, lost no time in filing the instant petition.[14]

On November 17, 1999, respondent filed an Urgent Motion For Release Pending Appeal. He primarily contended that, since Section 20(d) of P.D. No. 1069 sets the maximum period of provisional arrest at twenty (20) days, and he has been detained beyond the said period, without both a request for extradition having been received by the Philippine DOJ and the corresponding petition for extradition having been filed in the proper RTC, he should be released from detention.[15]

On December 16, 1999, petitioner filed a Manifestation with this Court stressing the fact that as early as November 5, 1999, the Philippine DOJ had already received from the Hong Kong DOJ, a formal request for the surrender of respondent. Petitioner also informed this Court that pursuant to the said request for extradition, the Philippine DOJ, representing the Government of Hong Kong, filed on November 22, 1999, a verified petition for the extradition of respondent docketed as Case No. 99-95733 and currently pending in Branch 10 of the RTC of Manila.[16]

Petitioner submits that the Court of Appeals erred in nullifying the Order of provisional arrest against respondent.

Petitioner imputes the following errors in the subject Decision of the Court of Appeals, to wit:

I

The Court of Appeals gravely erred in holding that:

- there was no urgency for the provisional arrest of respondent;
- the municipal law (P.D. No. 1069) subordinates an international agreement (RP-Hongkong Agreement);
- the supporting documents for a request for provisional arrest have to be authenticated;
- there was lack of factual and legal bases in the determination of probable cause; and
- the offense of accepting an advantage as an agent is not an offense under the Anti-Graft and Corrupt Practices Act, as amended.

II

The Court of Appeals seriously erred in declaring as null and void the trial court's Order of Arrest dated September 20, 1999 despite that (sic) respondent waived the right to assail the order of arrest by filing in the trial court a motion for release on recognizance, that (sic) the issue of legality of the order of arrest was being determined by the trial court, and respondent mocked the established rules of procedure intended for an orderly administration of justice.[17]

Petitioner takes exception to the finding of the Court of Appeals that the offense of accepting an advantage as an agent is not punishable under Republic Act (R.A.) No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act, thus, obviating the application of P.D. No. 1069[18] that requires the offense to be punishable under the laws both of the requesting state or government and the Republic of the Philippines.[19]

However, the issue of whether or not the rule of double criminality applies was not for the Court of Appeals to decide in the first place. The trial court in which the petition for extradition is filed is vested with jurisdiction to determine whether or not the offenses mentioned in the petition are extraditable based on the application of the dual criminality rule and other conditions mentioned in the applicable treaty. In this case, the presiding Judge of Branch 10 of the RTC of Manila has yet to rule on the extraditability of the offenses for which the respondent is wanted in Hong Kong. Therefore, respondent has prematurely raised this issue before the Court of Appeals and now, before this Court.

Petitioner's other arguments, however, are impressed with merit.

First. There was urgency for the provisional arrest of the respondent.

Section 20(a) of P.D. No. 1069 reads as follows:

Provisional Arrest. - (a) In case of urgency, the requesting state may, pursuant to the relevant treaty or convention and while the same remains in force, request for the provisional arrest of the accused, pending receipt of the request for extradition made in accordance with Section 4 of this Decree;

and Article 11 of the Extradition Agreement between the Philippines and Hong Kong provides in part that:

(1) In urgent cases, the person sought may, in accordance with the law of the requested Party, be provisionally arrested on the application of the requesting Party. x x x.

Nothing in existing treaties or Philippine legislation defines the meaning of "urgency" as used in the context of a request for provisional arrest. Using reasonable standards of interpretation, however, we believe that "urgency" connotes such conditions relating to the nature of the offense charged and the personality of the prospective extraditee which would make him susceptible to the inclination to flee or escape from the jurisdiction if he were

to learn about the impending request for his extradition and/or likely to destroy the evidence pertinent to the said request or his eventual prosecution and without which the latter could not proceed.[20]

We find that such conditions exist in respondent's case.

First. It should be noted that at the time the request for provisional arrest was made, respondent's pending application for the discharge of a restraint order over certain assets held in relation to the offenses with which he is being charged, was set to be heard by the Court of First Instance of Hong Kong on September 17, 1999. The Hong Kong DOJ was concerned that the pending request for the extradition of the respondent would be disclosed to the latter during the said proceedings, and would motivate respondent to flee the Philippines before the request for extradition could be made.[21]

There is also the fact that respondent is charged with seven (7) counts of accepting an advantage as an agent and seven (7) counts of conspiracy to defraud, for each count of which, if found guilty, he may be punished with seven (7) and fourteen (14) years imprisonment, respectively. Undoubtedly, the gravity of the imposable penalty upon an accused is a factor to consider in determining the likelihood that the accused will abscond if allowed provisional liberty. It is, after all, but human to fear a lengthy, if not a lifetime, incarceration. Furthermore, it has also not escaped the attention of this Court that respondent appears to be affluent and possessed of sufficient resources to facilitate an escape from this jurisdiction.[22]

The arguments raised by the respondent in support of his allegation that he is not a flight risk, are, to wit:

a)

He did not flee or hide when the Central Bank and the NBI investigated the matter alleged in the request for extradition of the Hongkong Government during the second half of 1994; he has since been cleared by the Central Bank;

b)

He did not flee or hide when the Hongkong Government's Independent Commission Against Corruption (ICAC) issued a warrant for his arrest in August 1997; he has in fact filed a case in Hongkong against the Hongkong Government for the release of his frozen assets;

c) He never changed his address nor his identity, and has sought vindication of his rights before the courts in Hongkong and in the Philippines;

d)

He has never evaded arrest by any lawful authority, and certainly will never fly away now that his mother is on her death bed.[23]

do not convince this Court. That respondent did not flee despite the investigation conducted by the Central Bank and the NBI way back in 1994, nor when the warrant for his arrest was issued by the Hong Kong ICAC in August 1997, is not a guarantee that he will not flee now that proceedings for his extradition are well on the way. Respondent is about to leave the protective sanctuary of his mother state to face criminal charges in another jurisdiction. It cannot be denied that this is sufficient impetus for him to flee the country as soon as the opportunity to do so arises.

Respondent also avers that his mother's impending death makes it impossible for him to leave the country. However, by respondent's own admission, his mother finally expired at the Cardinal Santos Hospital in Mandaluyong City last December 5, 1999.[24]

Second. Twelve (12) days after respondent was provisionally arrested, the Philippine DOJ received from the Hong Kong DOJ, a request for the surrender or extradition of respondent.

On one hand, Section 20(d) of P.D. No. 1069 reads as follows:

(d) If within a period of twenty (20) days after the provisional arrest the Secretary of Foreign Affairs has not received the request for extradition and the documents mentioned in Section 4 of this Decree, the accused shall be released from custody.

On the other hand, Article 11(3) of the RP-Hong Kong Extradition Agreement provides that:

(3)

The provisional arrest of the person sought shall be terminated upon the expiration of forty-five days from the date of arrest if the request for surrender has not been received, unless the requesting Party can justify continued provisional arrest of the person sought in which case the period of provisional arrest shall be terminated upon the expiration of a reasonable time not being more than a further fifteen days. This provision shall not prevent the re-arrest or surrender of the person sought if the request for the person's surrender is received subsequently.

Petitioner contends that Article 11(3) of the RP-Hong Kong Extradition Agreement which allows a period of forty-five (45) days for provisional arrest absent a formal request for extradition has amended Section 20(d) of P.D. No. 1069 which provides only a twenty (20) day period for the same.[25]

Petitioner's argument on this point, however, has been rendered moot and academic by the fact that as early as November 5, 1999 or twelve (12) days after respondent's arrest on September 23, 1999, the Philippine DOJ already received from the Hong Kong DOJ, a request for the surrender of respondent. The crucial event, after all, which tolls the provisional detention period is the transmittal of the request for the extradition or surrender of the extraditee. Hence, the question as to whether the period for provisional arrest stands at twenty (20) days, as provided for in P.D. No. 1069, or has been extended to forty-five (45) days under the Extradition Agreement between Hong Kong and the Philippines is rendered irrelevant by the actual request made by the Hong Kong DOJ for the extradition of respondent twelve (12) days after the request for the latter's provisional arrest.

Likewise, respondent's contention in his motion for release pending appeal, that his incarceration cannot continue beyond the twenty (20) day period without a petition for his extradition having been filed in court, is simply bereft of merit. It is clear from the above-cited provisions, that for the provisional arrest of an accused to continue, the formal request for extradition is not required to be filed in court. It only need be received by the requested state within the periods provided for by P.D. No. 1069 and the RP-Hong Kong Extradition Agreement. By no stretch of imagination may we infer from the required receipt of the request for extradition and its accompanying documents, the additional requisite that the same be filed in the court within the same periods.

Third. The request for provisional arrest of respondent and its accompanying documents are valid despite lack of authentication.

Section 20(b) of P.D. No. 1069 reads as follows:

(b) A request for provisional arrest shall be sent to the Director of the National Bureau of Investigation, Manila, either through the diplomatic channels or direct by post or telegraph.

and Article 11(1) of the RP-Hong Kong Extradition Agreement provides in part that:

x x x. The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought and the text of a warrant of arrest or a judgment of conviction against that person, a statement of the penalty for that offense, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offense been committed, or the person convicted, within the jurisdiction of the requested Party.

The language of the abovequoted provisions is clear. There is no requirement for the authentication of a request for provisional arrest and its accompanying documents.

We also note that under Section 20(d) of P.D. No. 1069, viz:

(d)

If within a period of 20 days after the request for provisional arrest the Secretary of Foreign Affairs has not received the request for extradition and the documents mentioned in Section 4 of this Decree,[26] the accused shall be released from custody.[27]

the original or authenticated copies of the decision or sentence imposed upon the accused by the requesting state or the criminal charge and the warrant of arrest issued by the authority of the requesting state, need not accompany the request for provisional arrest and may, in fact, be transmitted after the said request has already been received by the requested state.

Furthermore, the pertinent provision of the RP-Hong Kong Extradition Agreement enumerates the documents that must accompany the request, as follows: (1) an indication of the intention to request the surrender of the person sought; (2) the text of a warrant of arrest or judgment of conviction against that person; (3) a statement of penalty for that offense; and (4) such further information as would justify the issue of a warrant of arrest had the offense been committed, or the person convicted, within the jurisdiction of the requested party.[28] That the enumeration does not specify that these documents must be authenticated copies, is not a mere omission of law. This may be gleaned from the fact that while Article 11(1) does not require the accompanying documents of a request for provisional arrest to be authenticated, Article 9 of the same Extradition Agreement makes authentication a requisite for admission in evidence of any document accompanying a request for surrender or extradition.[29] In other words, authentication is required for the request for surrender or extradition but not for the request for provisional arrest.

We must also state that the above mentioned provisions of P.D. No. 1069 and the RP-Hong Kong Extradition Agreement, as they are worded, serve the purpose sought to be achieved by treaty stipulations for provisional arrest.

The process of preparing a formal request for extradition and its accompanying documents, and transmitting them through diplomatic channels, is not only time-consuming but also leakage-prone. There is naturally a great likelihood of flight by criminals who get an intimation of the pending request for their extradition. To solve this problem, speedier initial steps in the form of treaty stipulations for provisional arrest were formulated.[30] Thus, it is an accepted practice for the requesting state to rush its request in the form of a telex or diplomatic cable, the practicality of the use of which is conceded.[31] Even our own Extradition Law (P.D. No. 1069) allows the transmission of a request for provisional arrest via telegraph.[32] In the advent of modern technology, the telegraph or cable have been conveniently replaced by the facsimile machine. Therefore, the transmission by the Hong Kong DOJ of the request for respondent's provisional arrest and the accompanying documents, namely, a copy of the warrant of arrest against respondent, a summary of the facts of the case against him, particulars of his birth and address, a statement of the intention to request his provisional arrest and the reason therefor, by fax

machine, more than serves this purpose of expediency.

Respondent's reliance on *Garvida v. Sales, Jr.*[33] is misplaced. The proscription against the admission of a pleading that has been transmitted by facsimile machine has no application in the case at bar for obvious reasons. First, the instant case does not involve a pleading; and second, unlike the COMELEC Rules of Procedure which do not sanction the filing of a pleading by means of a facsimile machine, P.D. No. 1069 and the RP Hong Kong Extradition Agreement do not prohibit the transmission of a request for provisional arrest by means of a fax machine.

In a futile attempt to convince this Court, respondent cites our ruling in the recent case of *Secretary of Justice v. Hon. Lantion, et al.*[34], where we held that the right of an extraditee to due process necessarily includes the right to be furnished with copies of the extradition request and supporting papers, and to file a comment thereto during the evaluation stage of the extradition proceedings.

Respondent posits that, in the same vein, the admission by the RTC of the request for provisional arrest and its supporting documents despite lack of authentication is a violation of the respondent's right to due process. This contention fails to impress us.

Respondent's contention is now a non-issue, in view of our Resolution dated October 17, 2000 in the said case of *Secretary of Justice v. Hon. Lantion, et al.* reconsidering and reversing our earlier decision therein. Acting on therein petitioner's Motion for Reconsideration, we held that therein respondent is bereft of the right to notice and hearing during the evaluation stage of the extradition process.[35] Worthy to reiterate is the following concluding pronouncement of this Court in the said case:[36]

In tilting the balance in favor of the interests of the State, the Court stresses that it is not ruling that the private respondent has no right to due process at all throughout the length and breath of the extrajudicial proceedings. Procedural due process requires a determination of what process is due, when it is due and the degree of what is due. Stated otherwise, a prior determination should be made as to whether procedural protections are at all due and when they are due, which in turn depends on the extent to which an individual will be `condemned to suffer grievous loss.'[37] We have explained why an extraditee has no right to notice and hearing during the evaluation stage of the extradition process. As aforesaid, P.D. 1069 xxx affords an extraditee sufficient opportunity to meet the evidence against him once the petition is filed in court. The time for the extraditee to know the basis of the request for his extradition is merely moved to the filing in court of the formal petition for extradition. The extraditee's right to know is momentarily withheld during the evaluation stage of the extradition process to accommodate the more compelling interest of the State to prevent escape of potential extraditees which can be precipitated by premature information of the basis of the request for his extradition. No less compelling at that stage of the extradition proceedings is the need to be more deferential to the judgment of a co-equal branch of the government, the Executive, which has been endowed by our Constitution with greater power over matters involving our foreign relations. Needless to state, this balance of interests is not a static but a moving balance which can be adjusted as the extradition process moves from the administrative stage to the judicial stage and to the execution stage depending on factors that will come into play. In sum, we rule that the temporary hold on private respondent's privilege of notice and hearing is a soft restraint on his right to due process which will not deprive him of fundamental fairness should he decide to resist the request for his extradition to the United States. There is no denial of due process as long as fundamental fairness is assured a party.

Respondent also contends that the request for his provisional arrest was rendered defective by the fact that the person who made the request was not a foreign diplomat as provided for in Section 4 (2) of P.D. No. 1069, to wit:

SEC. 4. Request; By Whom Made; Requirements.-

(1) Any foreign state or government with which the Republic of the Philippines has entered into extradition treaty or convention, and only when the relevant treaty or convention, remains in force, may request for the extradition of any accused who is suspected of being in the territorial jurisdiction of the Philippines.

(2) The request shall be made by the Foreign Diplomat of the requesting state or government, addressed to the Secretary of Foreign Affairs, x x x.

This contention deserves scant consideration. The foregoing refers to the requirements for a request for extradition and not for a request for provisional arrest. The pertinent provisions are Article 11(2) which states:

An application for provisional arrest may be forwarded through the same channels as a request for surrender or through the International Criminal Police Organization (INTERPOL);[38]

and Article 8(1) which provides:

Requests for surrender and related documents shall be conveyed through the appropriate authority as may be notified from time to time by one party to another.[39]

Hence, there is sufficient compliance with the foregoing if the request for provisional arrest is made by an official who is authorized by the government of the requesting state to make such a request and the authorization is communicated to the requested state.

The request for provisional arrest of respondent was signed by Wayne Walsh, Senior Government Counsel of the Mutual Legal Assistance Unit, International Law Division of the Hong Kong DOJ who stated in categorical terms that:

The Department of Justice (Mutual Legal Assistance Unit) of the HKSAR is the appropriate authority under the Agreement to make requests for provisional arrest and surrender. I confirm that as a member of the Mutual Legal Assistance Unit, I am authorized (sic) to make this request for provisional arrest.[40]

Last. There was sufficient factual and legal basis for the determination of probable cause as a requisite for the issuance of the Order of Arrest.[41]

We have defined probable cause for the issuance of a warrant of arrest as "the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested." [42] The determination of probable cause is a function of the Judge. Such is the mandate of our Constitution which provides that a warrant of arrest shall issue only upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce.[43] In the case of *Allado v. Diokno*, [44] we stated that personal determination by the Judge of the existence of probable cause means that he -

(a)

shall personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or, (b) if on the basis thereof he finds no probable cause, may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion on the existence of probable cause.[45]

The Judge cannot, therefore, merely rely on the certification issued by the prosecutor. He is, however, not required to personally examine ipso facto the complainant and his witnesses. He sufficiently complies with the requirement of personal determination if he reviews the information and the documents attached thereto, and on the basis thereof forms a belief that the accused is probably guilty of the crime with which he is being charged.[46] The Judge determines the existence of probable cause to pass upon whether a warrant of arrest

should be issued against the accused, that is, whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice.[47]

The request for the respondent's provisional arrest was accompanied by facsimile copies of the outstanding warrant of arrest issued by the Hong Kong government, a summary of the facts of the case against respondent, particulars of his birth and address, an intention to request his provisional arrest and the reason therefor. The said documents were appended to the application for respondent's provisional arrest filed in the RTC,[48] and formed the basis of the judge's finding of probable cause for the issuance of the warrant of arrest against respondent.

Respondent alleges the contrary and surmises that all that the trial judge did was to interview NBI agent Saunar who filed the application for the issuance of the warrant of provisional arrest, and that "her honor did not probably even notice that the supporting documents were not authenticated." [49] The allegation, baseless and purely speculative, is one which we cannot countenance in view of the legal presumption that official duty has been regularly performed.[50]

That the Presiding Judge of RTC Manila, Branch 19, made a personal determination of the existence of probable cause on the basis of the documents forwarded by the Hong Kong DOJ is further supported by the Order of Arrest against respondent which states:

ORDER

This treats of the Application For Provisional Arrest of Juan Antonio Muñoz, for the purpose of extradition from the Republic of the Philippines.

This application was filed in behalf of the Government of Hong Kong Special Administrative Region for the provisional arrest of Juan Antonio Muñoz, pursuant to Section 20 of Presidential Decree No. 1069, in relation to paragraph 1, Article 11 of the Agreement for the Surrender of Accused and Convicted Persons between the Republic of the Philippines and Hong Kong on provisional arrest. The application alleged that Juan Antonio Muñoz is wanted in Hong Kong for seven (7) counts of the offense of "accepting an advantage as an agent", contrary to Section 9(1) (9) of the Prevention of Bribery Ordinance Cap. 201 of Hong Kong and seven (7) counts of the offense of "conspiracy to defraud", contrary to the Common Law of Hong Kong.

That a warrant of arrest was issued by the Magistrate's Court at Eastern Magistracy, Hong Kong on August 23, 1997, pursuant to the 14 charges filed against him before the issuing Court. Juan Antonio Muñoz is now alleged to be in the Philippines. He was born on June 24, 1941, a holder of Philippines Passport No. 2K 934808, formerly an employee of the Central Bank of the Philippines and with address at Phase 3, BF Homes, No. 26 D C Chuan Street, Metro Manila.

That there is an urgency in the issuance of the provisional arrest warrant for the reason that the application to discharge the restraint over the funds, subject of the offenses, in his Citibank Account in Hong Kong was set for hearing on September 17, 1999 and that his lawyer in Hong Kong will be notified of the request of the Hong Kong Government for his provisional arrest (sic) and Juan Antonio E. Muñoz upon knowledge of the request.

Considering that the Extradition treaty referred to is part of our systems of laws and recognized by Presidential Decree No. 1069 and the Constitution itself by the adoption of international laws, treaties and conventions as parts (sic) of the law of the land, the application for provisional arrest of Juan Antonio Muñoz is hereby GRANTED. Let a warrant for his provisional arrest therefore issue.

SO ORDERED.[51] (Underscoring supplied.)

Finally, petitioner also avers that the respondent has waived his right to assail the validity of his provisional arrest when he filed a motion for release on recognizance. Considering that we find petitioner's other contentions to be

impressed with merit, there is no need to delve further into this particular issue.

WHEREFORE, the petition is GRANTED, and the assailed Decision of the Court of Appeals, dated November 9, 1999, in CA-G.R. SP No. 55343 is hereby REVERSED and SET ASIDE. Respondent's "Urgent Motion For Release Pending Appeal" is hereby DENIED.

SO ORDERED.

Bellosillo, Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Associate Justice Bernardo Ll. Salas and concurred in by Associate Justices Cancio C. Garcia and Candido V. Rivera, Third Division, in CA-G.R. SP No. 55343, Rollo, pp. 32-51.

[2] Penned by Judge Zenaida R. Daguna in Case No. 99-176691, Id., pp.80-81.

[3] Rollo, p. 55.

[4] Id., p. 54.

[5] Id.,p. 8.

[6] Id., p. 72.

[7] See Note No. 3, supra at p. 9.

[8] Ibid.

[9] Rollo, p. 38.

[10] Id., p. 42.

[11] Id., p. 41.

[12] Id., p. 48.

[13] Id., p. 49.

[14] See Note No. 3, supra at p. 4.

[15] Respondent's Urgent Motion For Release Pending Appeal, Rollo, p. 94.

[16] Petitioner's Manifestation dated December 15, 1999, Rollo, p.110.

[17] See Note No. 3, supra at p. 13.

[18] See Note No. 3, supra at p. 22.

[19] Section 3(a), P.D. No. 1069 provides, viz.:

"A criminal investigation instituted by authorities of the requesting state or government charging the accused with an offense punishable under the laws both of the requesting state or government and the Republic of the Philippines by imprisonment or other form of deprivation of liberty for a period stipulated in the relevant extradition treaty or convention."

[20] Bassiouni, International Extradition United States Law and Practice, Vol. II, 1987 ed., p. 526.

[21] See Note No. 1, supra at p. 52.

[22] *People v. Berg*, 79 Phil. 842 (1947).

[23] See Note No. 13, *supra* at pp. 96-97.

[24] Respondent's Urgent Manifestation/Motion dated December 6, 1999, Rollo, p. 108.

[25] See Note No. 3, *supra* at pp. 16-17.

[26] SEC. 4. Request; By Whom Made; Requirements.-

(1) Any foreign state or government with which the Republic of the Philippines has entered into extradition treaty or convention, and only when the relevant treaty or convention, remains in force, may request for the extradition of any accused who is or suspected of being in the territorial jurisdiction of the Philippines.

(2) The request shall be made by the Foreign Diplomat of the requesting state or government, addressed to the Secretary of Foreign Affairs, and shall be accompanied by:

(a) The original or authentic copy of either-

(1) the decision or sentence imposed upon the accused by the court of the requesting state or government; or

(2) the criminal charge and the warrant of arrest issued by the authority of the requesting state or government or having jurisdiction of the matter or some other instruments having the equivalent legal force.

(b) A recital of the acts for which extradition is requested, with the fullest particulars as to the name and identity of the accused, his whereabouts in the Philippines, if known, the acts or omissions complained of, and the time and place of the commission of these acts;

(c) The text of the applicable law or a statement of the contents of said law, and the designation or description of the offense by the law, sufficient for evaluation of the request; and

(d) Such other documents or information in support of the request. (Underscoring supplied.)

[27] Underscoring supplied.

[28] Article 11(1) of the RP-Hong Kong Extradition Agreement.

[29] Article 9(1) of the RP-Hong Kong Extradition Agreement provides, *viz.*:

"Any document that, in accordance with Article 8 of this Agreement, accompanies a request for surrender shall be admitted in evidence, if authenticated, in any proceedings in the jurisdiction of the requested party."

[30] Shearer, *Extradition in International Law*, 1971 Ed., p. 200.

[31] See Note No. 19, *supra* at p. 526.

[32] Section 20(b) of P.D. No. 1069 provides, *viz.*:

"A request for provisional arrest shall be sent to the Director of the National Bureau of Investigation, Manila, either through the diplomatic channels or direct by post or telegraph."

[33] 271 SCRA 767 (1997).

[34] Decision, G.R. No. 139465, January 18, 2000.

[35] Resolution, G.R. No. 139465, October 17, 2000.

[36] *Id.*, at pp. 14-15.

[37] *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972), citing *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168, 95 L. Ed. 817, 852, 71 S. Ct. 624 (1951) (Frankfurter, J., Concurring), quoted in *Goldberg v. Kelly*, 397 U.S. 254, 263, 25 L. Ed. 2d 287, 296, 90 S. Ct. 1011 (1970).

[38] Underscoring supplied.

[39] Underscoring supplied.

[40] See Note No. 4, *supra* at p. 73.

[41] See Note No. 3, *supra* at p. 21.

[42] *Allado v. Diokno*, 232 SCRA 192, 199-200 (1994); *Ho v. People*, 280 SCRA 365, 377 (1997).

[43] Section 2, Article III of the 1987 Philippine Constitution.

[44] *Supra*.

[45] *Id.*, p. 205.

[46] *Ho v. People*, *supra* at p. 381.

[47] *Id.*, p. 380.

[48] See Note No. 3, *supra* at p. 21.

[49] Respondent's Comment, p. 23.

[50] *Factoran v. Court of Appeals*, G.R. No. 93540, December 13, 1999, p. 12, citing *Beautifont Inc., v. Court of Appeals, et. al.*, 157 SCRA 481, 493 (1988).

[51] Rollo, pp. 80-81.

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