

FRANCISCO YAP, JR., A.K.A. EDWIN YAP, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 141529. June 06, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

The right against excessive bail, and the liberty of abode and travel, are being invoked to set aside two resolutions of the Court of Appeals which fixed bail at P5,500,000.00 and imposed conditions on change of residence and travel abroad.

For misappropriating amounts equivalent to P5,500,000.00, petitioner was convicted of estafa by the Regional Trial Court of Pasig City[1] and was sentenced to four years and two months of prision correccional, as minimum, to eight years of prision mayor as maximum, "in addition to one (1) year for each additional P10,000.00 in excess of P22,000.00 but in no case shall it exceed twenty (20) years." [2] He filed a notice of appeal, and moved to be allowed provisional liberty under the cash bond he had filed earlier in the proceedings. The motion was denied by the trial court in an order dated February 17, 1999.

After the records of the case were transmitted to the Court of Appeals, petitioner filed with the said court a Motion to Fix Bail For the Provisional Liberty of Accused-Appellant Pending Appeal, invoking the last paragraph of Section 5, Rule 114 of the 1997 Revised Rules of Court. Asked to comment on this motion, the Solicitor General opined that petitioner may be allowed to post bail in the amount of P5,500,000.00 and be required to secure "a certification/guaranty from the Mayor of the place of his residence that he is a resident of the area and that he will remain to be so until final judgment is rendered or in case he transfers residence, it must be with prior notice to the court and private complainant." [3] Petitioner filed a Reply, contending that the proposed bail of P5,500,000.00 was violative of his right against excessive bail.

The assailed resolution of the Court of Appeals[4], issued on October 6, 1999, upheld the recommendation of the Solicitor General; thus, its dispositive portion reads:

WHEREFORE, premises considered, the "Motion to Fix Bail For Provisional Liberty of Accused-Appellant Pending Appeal" is hereby GRANTED. Accused-appellant Francisco Yap, Jr., a.k.a. Edwin Yap is hereby ALLOWED TO POST BAIL in the amount of Five Million Five Hundred Thousand (P5,500,000.00) Pesos, subject to the following conditions, viz.:

(1)

He (accused-appellant) secures a certification/guaranty from the Mayor of the place of his residence that he is a resident of the area and that he will remain to be a resident therein until final judgment is rendered or in case he transfers residence, it must be with prior notice to the court;

(2)

The Commission of Immigration and Deportation (CID) is hereby directed to issue a hold departure order

against accused-appellant; and

(3)

The accused-appellant shall forthwith surrender his passport to the Division Clerk of Court for safekeeping until the court orders its return;

(4)

Any violation of the aforesaid conditions shall cause the forfeiture of accused-appellant's bail bond, the dismissal of appeal and his immediate arrest and confinement in jail.

SO ORDERED.[5]

A motion for reconsideration was filed, seeking the reduction of the amount of bail fixed by respondent court, but was denied in a resolution issued on November 25, 1999. Hence, this petition.

Petitioner sets out the following assignments of error:

The respondent Court of Appeals committed grave abuse of discretion in fixing the bail for the provisional liberty of petitioner pending appeal in the amount of P5.5 million.

The respondent Court of Appeals committed grave abuse of discretion in basing the bail for the provisional liberty of the petitioner on his civil liability.

The respondent Court of Appeals unduly restricted petitioner's constitutional liberty of abode and travel in imposing the other conditions for the grant of bail.

Petitioner contends that the Court of Appeals, by setting bail at a prohibitory amount, effectively denied him his right to bail. He challenges the legal basis of respondent court for fixing bail at P5,500,000.00, which is equivalent to the amount of his civil liability to private complainant Manila Mahogany Marketing Corporation, and argues that the Rules of Court never intended for the civil liability of the accused to be a guideline or basis for determining the amount of bail. He prays that bail be reduced to at least P40,000.00, citing the maximum amount of bail that can be posted for the crime of estafa under the 1996 Bail Bond Guide, or P20,000.00, equivalent to the amount of bail he posted during the trial of the case.[6]

On the other hand, the Solicitor General maintains that no grave abuse of discretion could be ascribed to the Court of Appeals for fixing the amount of bail at P5,500,000.00 considering the severity of the penalty imposed, the weight of the evidence against petitioner, and the gravity of the offense of which petitioner was convicted by the RTC. He asserted that the P5,500,000.00 not only corresponded to civil liability but also to the amount of fraud imputed to petitioner. The Solicitor General further pointed out the probability of flight in case petitioner is released on bail, it having been established that petitioner was in possession of a valid passport and visa and had in fact left the country several times during the course of the proceedings in the lower court. It was also shown that petitioner used different names in his business transactions and had several abodes in different parts of the country.

As for the conditions imposed by the bail bond, the Solicitor General advanced that all that the Court of Appeals requires is notice in case of change of address; it does not in any way impair petitioner's right to change abode for as long as the court is apprised of his change of residence during the pendency of the appeal.

Petitioner's case falls within the provisions of Section 5, Rule 114 of the 1997 Rules of Court which states:

SEC. 5. Bail, when discretionary. --- Upon conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua or life imprisonment, the court, on application, may admit the accused to bail.

The court, in its discretion, may allow the accused to continue on provisional liberty under the same bail bond during the period to appeal subject to the consent of the bondsman.

If the court imposed a penalty of imprisonment exceeding six (6) years, but not more than twenty (20) years, the accused shall be denied bail, or his bail previously granted shall be cancelled, upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

- (a) That the accused is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
- (b) That the accused is found to have previously escaped from legal confinement, evaded sentence, or has violated the conditions of his bail without valid justification;
- (c) That the accused committed the offense while on probation, parole, or under conditional pardon;
- (d) That the circumstances of the accused or his case indicate the probability of flight if released on bail; or
- (e) That there is undue risk that during the pendency of the appeal, the accused may commit another crime.

The appellate court may review the resolution of the Regional Trial Court, on motion and with notice to the adverse party.[7]

There is no question that in the present case the Court of Appeals exercised its discretion in favor of allowing bail to petitioner on appeal. Respondent court stated that it was doing so for "humanitarian reasons", and despite a perceived high risk of flight, as by petitioner's admission he went out of the country several times during the pendency of the case, for which reason the court deemed it necessary to peg the amount of bail at P5,500,000.00.

The prohibition against requiring excessive bail is enshrined in the Constitution.[8] The obvious rationale, as declared in the leading case of *De la Camara vs. Enage*,[9] is that imposing bail in an excessive amount could render meaningless the right to bail. Thus, in *Villaseñor vs. Abaño*,[10] this Court made the pronouncement that it will not hesitate to exercise its supervisory powers over lower courts should the latter, after holding the accused entitled to bail, effectively deny the same by imposing a prohibitory sum or exacting unreasonable conditions.

xxx There is grim irony in an accused being told that he has a right to bail but at the same time being required to post such an exorbitant sum. What aggravates the situation is that the lower court judge would apparently yield to the command of the fundamental law. In reality, such a sanctimonious avowal of respect for a mandate of the Constitution was on a purely verbal level. There is reason to believe that any person in the position of petitioner would under the circumstances be unable to resist thoughts of escaping from confinement, reduced as he must have been to a state of desperation. In the same breath as he was told he could be bailed out, the excessive amount required could only mean that provisional liberty would be beyond his reach. It would have been more forthright if he were informed categorically that such a right could not be availed of. There would have been no disappointment of expectations then. It does call to mind these words of Justice Jackson, "a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." xxx[11]

At the same time, Section 9, Rule 114 of the Revised Rules of Criminal Procedure advises courts to consider the following factors in the setting of the amount of bail:

- (a) Financial ability of the accused to give bail;
- (b) Nature and circumstances of the offense;
- (c) Penalty for the offense charged;
- (d) Character and reputation of the accused;
- (e) Age and health of the accused;
- (f) Weight of the evidence against the accused;

- (g) Probability of the accused appearing at the trial;
- (h) Forfeiture of other bail;
- (i) The fact that the accused was a fugitive from justice when arrested; and
- (j) Pendency of other cases where the accused is on bail.

Thus, the court has wide latitude in fixing the amount of bail. Where it fears that the accused may jump bail, it is certainly not precluded from installing devices to ensure against the same. Options may include increasing the bail bond to an appropriate level, or requiring the person to report periodically to the court and to make an accounting of his movements.[12] In the present case, where petitioner was found to have left the country several times while the case was pending, the Court of Appeals required the confiscation of his passport and the issuance of a hold-departure order against him.

Under the circumstances of this case, we find that appropriate conditions have been imposed in the bail bond to ensure against the risk of flight, particularly, the combination of the hold-departure order and the requirement that petitioner inform the court of any change of residence and of his whereabouts. Although an increase in the amount of bail while the case is on appeal may be meritorious, we find that the setting of the amount at P5,500,000.00 is unreasonable, excessive, and constitutes an effective denial of petitioner's right to bail.

The purpose for bail is to guarantee the appearance of the accused at the trial,[13] or whenever so required by the court[14] The amount should be high enough to assure the presence of the accused when required but no higher than is reasonably calculated to fulfill this purpose.[15] To fix bail at an amount equivalent to the civil liability of which petitioner is charged (in this case, P5,500,000.00) is to permit the impression that the amount paid as bail is an exaction of the civil liability that accused is charged of; this we cannot allow because bail is not intended as a punishment, nor as a satisfaction of civil liability which should necessarily await the judgment of the appellate court.

At the same time, we cannot yield to petitioner's submission that bail in the instant case be set at P40,000.00 based on the 1996 Bail Bond Guide. (The current Bail Bond Guide, issued on August 29, 2000, maintains recommended bail at P40,000.00 for estafa where the amount of fraud is P142,000.00 or over and the imposable penalty 20 years of reclusion temporal). True, the Court has held that the Bail Bond Guide, a circular of the Department of Justice for the guidance of state prosecutors, although technically not binding upon the courts, "merits attention, being in a sense an expression of policy of the Executive Branch, through the Department of Justice, in the enforcement of criminal laws." [16] Thus, courts are advised that they must not only be aware but should also consider the Bail Bond Guide due to its significance in the administration of criminal justice.[17] This notwithstanding, the Court is not precluded from imposing in petitioner's case an amount higher than P40,000.00 (based on the Bail Bond Guide) where it perceives that an appropriate increase is dictated by the circumstances.

It militates emphasis that petitioner is seeking bail on appeal. Section 5, Rule 114 of the Revised Rules of Criminal Procedure is clear that although the grant of bail on appeal in non-capital offenses is discretionary, when the penalty imposed on the convicted accused exceeds six years and circumstances exist that point to the probability of flight if released on bail, then the accused must be denied bail, or his bail previously granted should be cancelled.[18] In the same vein, the Court has held that the discretion to extend bail during the course of the appeal should be exercised with grave caution and for strong reasons, considering that the accused had been in fact convicted by the trial court.[19] In an earlier case, the Court adopted Senator Vicente J. Francisco's disquisition on why bail should be denied after judgment of conviction as a matter of wise discretion; thus:

The importance attached to conviction is due to the underlying principle that bail should be granted only where it is uncertain whether the accused is guilty or innocent, and therefore, where that uncertainty is removed by conviction it would, generally speaking, be absurd to admit to bail. After a person has been tried and convicted

the presumption of innocence which may be relied upon in prior applications is rebutted, and the burden is upon the accused to show error in the conviction. From another point of view it may be properly argued that the probability of ultimate punishment is so enhanced by the conviction that the accused is much more likely to attempt to escape if liberated on bail than before conviction. xxx [20]

Petitioner is seeking bail on appeal. He was in fact declared guilty beyond reasonable doubt by the RTC, and due to the serious amount of fraud involved, sentenced to imprisonment for twenty years --- the maximum penalty for estafa by false pretenses or fraudulent acts allowed by the Revised Penal Code. Although it cannot be controverted that the Court of Appeals, despite the foregoing considerations and the possibility of flight still wielded its discretion to grant petitioner bail, the setting of bail in the amount of P5,500,000.00 is unjustified as having no legal nor factual basis. Guided by the penalty imposed by the lower court and the weight of the evidence against petitioner, we believe that the amount of P200,000.00 is more reasonable.

Petitioner also contests the condition imposed by the Court of Appeals that he secure "a certification/guaranty from the Mayor of the place of his residence that he is a resident of the area and that he will remain to be a resident therein until final judgment is rendered or in case he transfers residence, it must be with prior notice to the court", claiming that the same violates his liberty of abode and travel.

Notably, petitioner does not question the hold-departure order which prevents him from leaving the Philippines unless expressly permitted by the court which issued the order.[21] In fact, the petition submits that "the hold-departure order against petitioner is already sufficient guarantee that he will not escape. Thus, to require him to inform the court every time he changed his residence is already unnecessary." [22]

The right to change abode and travel within the Philippines, being invoked by petitioner, are not absolute rights. Section 6, Article III of the 1987 Constitution states:

The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

The order of the Court of Appeals releasing petitioner on bail constitutes such lawful order as contemplated by the above provision.[23] The condition imposed by the Court of Appeals is simply consistent with the nature and function of a bail bond, which is to ensure that petitioner will make himself available at all times whenever the Court requires his presence. Besides, a closer look at the questioned condition will show that petitioner is not prevented from changing abode; he is merely required to inform the court in case he does so.

WHEREFORE, the petition is **PARTIALLY GRANTED**. Petitioner's bail pending appeal is reduced from P5,500,000.00 to P200,000.00. In all other respects, the resolutions of the Court of Appeals, dated October 6, 1999 and November 25, 1999, respectively, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Branch 167, presided by Judge Alfredo C. Flores.

[2] RTC Decision; Rollo, 33-34.

[3] Comment of Solicitor General to Motion to Fix Bail; Rollo, 59.

[4] Fourteenth Division, composed of Associate Justice Ramon A. Barcelona (Chairman and ponente), Associate

Justice Demetrio G. Demetria, and Associate Justice Mercedes Gozo-Dadole.

[5] CA Resolution dated October 6, 1999; Rollo, 18-19.

[6] Petition; Rollo, 8.

[7] See also Section 5, Rule 114 of the Revised Rules of Criminal Procedure, effective December 1, 2000.

[8] At Section 13, Article III (Bill of Rights), the 1987 Constitution declares: "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." (Emphasis supplied)

[9] 41 SCRA 1 (1971).

[10] 21 SCRA 312 (1967). See also *Chu vs. Dolalas*, 260 SCRA 309 (1996).

[11] *Dela Camara vs. Enage*, supra, at 9, 10.

[12] *Almeda vs. Villaluz*, 66 SCRA 38 (1975).

[13] *Almeda vs. Villaluz*, supra.

[14] Sec. 2, Rule 114, Revised Rules of Criminal Procedure.

[15] *Villaseñor vs. Abaño*, 21 SCRA 312 (1967).

[16] *People vs. Resterio-Andrade*, 175 SCRA 782 (1989).

[17] *Chu vs. Dolalas*, supra.

[18] *Maguddatu vs. Court of Appeals*, 326 SCRA 362 (2000); *Obosa vs. Court of Appeals*, 266 SCRA 281 (1997), citing *People vs. Caderao and Associated Insurance & Surety Co., Inc.*, 117 Phil. 650 (1963).

[19] *Obosa vs. Court of Appeals*, supra.

[20] *Id.*, citing *FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES --- CRIMINAL PROCEDURE* (1963), at 322.

[21] See *Defensor-Santiago vs. Vasquez*, 217 SCRA 633 (1993), where the Court held that the ex parte issuance of a hold-departure order was a valid exercise of the presiding court's inherent power to preserve and to maintain the effectiveness of its jurisdiction over the case and the person of the accused. See also *Silverio vs. Court of Appeals*, 195 SCRA 760 (1991), where the Court upheld the hold-departure order as a valid restriction on the accused's right to travel, as to keep him within the reach of the courts.

[22] Petition; Rollo, 11

[23] *Manotoc vs. Court of Appeals*, 142 SCRA 149 (1986).

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