

PABLO FELICIANO, PETITIONER, VS. HON. LADISLAO PASICOLAN AS JUDGE OF THE COURT OF FIRST INSTANCE OF PAMPANGA AND UNION C. KAYANAN AS PROVINCIAL FISCAL OF PAMPANGA, RESPONDENTS.

G.R. No. 14657. July 31, 1961

Ponente: NATIVIDAD, J.

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NATIVIDAD, J.:

This is a petition for writ of mandamus to compel the respondent Judge to decide on the merits a motion filed by the petitioner in Criminal Case No. 1984 of the Court of First Instance of Pampanga, People vs. Carlos Pabustan, et al., in which he asks that the Court fix at P10,000.00 the amount of the bail for his liberty pending trial.

It appears that the petitioner, Pablo Feliciano, was one of the eighteen persons charged with the crime of kidnapping with murder in an amended information filed on October 24, 1958, in Criminal Case No. 1984 of the Court of First Instance of Pampanga, People vs. Carlos Pabustan, et al. Upon learning of the filing of said information and that a warrant for his arrest had been issued, the petitioner, fearing, according to his lawyer, that he might fall into the hands of irresponsible police officers, and to avoid disgrace and humiliation consequent to an arrest and incarceration, went into hiding. On October 30, 1958, however, Attorney Filemon Cajator, at the instance of the petitioner's wife, filed in the case a motion asking that the Court fix at P10,000.00 the amount of the bond for petitioner's release pending trial. The Provincial Fiscal of Pampanga opposed this motion, on the ground that the filing thereof was premature as the petitioner had not yet been arrested. After hearing, the respondent Judge, then presiding the Court of First Instance of Pampanga, dismissed petitioner's motion, on the ground that "pending his arrest or surrender, Pablo Feliciano has not the right to ask this court to admit him to bail." Hence, the instant proceeding.

It is contended that as, under the Constitution, "all persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong," Article III, Section 1, paragraph (16), Constitution of the Philippines, and that the words "all persons" used in said constitutional provision have been interpreted to mean "all persons, without distinction, whether formally charged or not yet so charged with any criminal offense," *Herras Teehankee vs. Director of Prisons*, 76 Phil., 756, the respondent Judge has failed to comply with a duty imposed by law in refusing to decide on the merits petitioner's motion for admission to bail and, consequently, mandamus lies to compel said respondent to do so.

We fail to find merits in petitioner's contention. The petition at bar is in effect a petition for admission to bail. And the rule on the subject in this jurisdiction is well settled. There is no question as to the soundness of the rule invoked by petitioner. Such is the law in this jurisdiction. But, the rule is subject to the limitation that the person applying for admission to bail should be in the custody of the law, or otherwise deprived of his liberty. Bail is defined under the Rules of Court as security "required and given for the release of a person who is in custody of the law," Rule 110, sec. 1, Rules of Court. In the case of *Herras Teehankee vs. Rovira*, 75 Phil., 364, this Court

held:

"This constitutional mandate refers to all persons, not only to persons against whom a complaint or information has already been formally filed. It lays down the rule that all persons shall before conviction be bailable except those charged with capital offenses when evidence of guilt is strong. According to this provision, the general rule is that any person, before being convicted of any criminal offense, shall be bailable, except when he is charged with a capital offense and the evidence of his guilt is strong. Of course, only those persons who have been either arrested, detained or otherwise deprived of their liberty will ever have occasion to seek the benefits of said provision. But in order that a person can invoke the constitutional precept, it is not necessary that he should wait until a formal complaint or information is filed against him. From the moment he is placed under arrest, detention or restraint by the officers of the law, he can claim this guarantee of the Bill of Rights, and this right he retains unless and until he is charged with a capital offense and evidence of his guilt is strong."

And in the case of *Manigbas vs. Luna* (88 Phil., 466; 52 Off. Gaz., [3] 1405) it was held:

"We hold that this petition is premature for its purpose is to compel the performance of a duty which does not exist there being no correlative right the use or enjoyment of it has been denied which may be the subject of mandamus (section 67, Rule 3); and this is so because the right to bail only accrues when a person is arrested or deprived of his liberty. The purpose of bail is to secure one's release and it would be incongruous to grant bail to one who is free. Thus, "bail is the security required and given for the release of a person who is in the custody of the law" (Rule 110, section 1), and evidently the accused do not come within its purview."

In the instant case, the petitioner, upon learning that an amended information charging him and seventeen others with the crime of kidnapping with murder had been filed, and that a warrant for his arrest had been issued, immediately went into hiding and until now is at large. Without surrendering himself, he filed the motion in which he asks that the court fix the amount of the bail bond for his release pending trial. It is, therefore, clear that the petitioner is a free man and is under the jurisprudence not entitled to admission to bail.

Wherefore, we hold that the petitioner has failed to make sufficient showing to entitle him to the remedy herein prayed for. Accordingly, the present proceeding is hereby dismissed, with the costs taxed against the petitioner. It is so ordered.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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