

**GOVERNMENT OF HONG KONG SPECIAL ADMINISTRATIVE REGION,
REPRESENTED BY THE PHILIPPINE DEPARTMENT OF JUSTICE,
PETITIONER, VS. HON. FELIXBERTO T. OLALIA, JR. AND JUAN
ANTONIO MUÑOZ...**

G.R. NO. 153675. April 19, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, seeking to nullify the two Orders of the Regional Trial Court (RTC), Branch 8, Manila (presided by respondent Judge Felixberto T. Olalia, Jr.) issued in Civil Case No. 99-95773. These are: (1) the Order dated December 20, 2001 allowing Juan Antonio Muñoz, private respondent, to post bail; and (2) the Order dated April 10, 2002 denying the motion to vacate the said Order of December 20, 2001 filed by the Government of Hong Kong Special Administrative Region, represented by the Philippine Department of Justice (DOJ), petitioner. The petition alleges that both Orders were issued by respondent judge with grave abuse of discretion amounting to lack or excess of jurisdiction as there is no provision in the Constitution granting bail to a potential extraditee.

The facts are:

On January 30, 1995, the Republic of the Philippines and the then British Crown Colony of Hong Kong signed an "Agreement for the Surrender of Accused and Convicted Persons." It took effect on June 20, 1997.

On July 1, 1997, Hong Kong reverted back to the People's Republic of China and became the Hong Kong Special Administrative Region.

Private respondent Muñoz was charged before the Hong Kong Court with three (3) counts of the offense of "accepting an advantage as agent," in violation of Section 9 (1) (a) of the Prevention of Bribery Ordinance, Cap. 201 of Hong Kong. He also faces seven (7) counts of the offense of conspiracy to defraud, penalized by the common law of Hong Kong. On August 23, 1997 and October 25, 1999, warrants of arrest were issued against him. If convicted, he faces a jail term of seven (7) to fourteen (14) years for each charge.

On September 13, 1999, the DOJ received from the Hong Kong Department of Justice a request for the provisional arrest of private respondent. The DOJ then forwarded the request to the National Bureau of Investigation (NBI) which, in turn, filed with the RTC of Manila, Branch 19 an application for the provisional arrest of private respondent.

On September 23, 1999, the RTC, Branch 19, Manila issued an Order of Arrest against private respondent. That same day, the NBI agents arrested and detained him.

On October 14, 1999, private 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 questioning the

validity of the Order of Arrest.

On November 9, 1999, the Court of Appeals rendered its Decision declaring the Order of Arrest void.

On November 12, 1999, the DOJ filed with this Court a petition for review on certiorari, docketed as G.R. No. 140520, praying that the Decision of the Court of Appeals be reversed.

On December 18, 2000, this Court rendered a Decision granting the petition of the DOJ and sustaining the validity of the Order of Arrest against private respondent. The Decision became final and executory on April 10, 2001.

Meanwhile, as early as November 22, 1999, petitioner Hong Kong Special Administrative Region filed with the RTC of Manila a petition for the extradition of private respondent, docketed as Civil Case No. 99-95733, raffled off to Branch 10, presided by Judge Ricardo Bernardo, Jr. For his part, private respondent filed, in the same case, a petition for bail which was opposed by petitioner.

After hearing, or on October 8, 2001, Judge Bernardo, Jr. issued an Order denying the petition for bail, holding that there is no Philippine law granting bail in extradition cases and that private respondent is a high "flight risk."

On October 22, 2001, Judge Bernardo, Jr. inhibited himself from further hearing Civil Case No. 99-95733. It was then raffled off to Branch 8 presided by respondent judge.

On October 30, 2001, private respondent filed a motion for reconsideration of the Order denying his application for bail. This was granted by respondent judge in an Order dated December 20, 2001 allowing private respondent to post bail, thus:

In conclusion, this Court will not contribute to accused's further erosion of civil liberties. The petition for bail is granted subject to the following conditions:

- Bail is set at Php750,000.00 in cash with the condition that accused hereby undertakes that he will appear and answer the issues raised in these proceedings and will at all times hold himself amenable to orders and processes of this Court, will further appear for judgment. If accused fails in this undertaking, the cash bond will be forfeited in favor of the government;
- Accused must surrender his valid passport to this Court;
- The Department of Justice is given immediate notice and discretion of filing its own motion for hold departure order before this Court even in extradition proceeding; and
- Accused is required to report to the government prosecutors handling this case or if they so desire to the nearest office, at any time and day of the week; and if they further desire, manifest before this Court to require that all the assets of accused, real and personal, be filed with this Court soonest, with the condition that if the accused flees from his undertaking, said assets be forfeited in favor of the government and that the corresponding lien/annotation be noted therein accordingly.

SO ORDERED.

On December 21, 2001, petitioner filed an urgent motion to vacate the above Order, but it was denied by respondent judge in his Order dated April 10, 2002.

Hence, the instant petition. Petitioner alleged that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in admitting private respondent to bail; that there is nothing in the Constitution or statutory law providing that a potential extraditee has a right to bail, the right being limited solely to criminal proceedings.

In his comment on the petition, private respondent maintained that the right to bail guaranteed under the Bill of

Rights extends to a prospective extraditee; and that extradition is a harsh process resulting in a prolonged deprivation of one's liberty.

Section 13, Article III of the Constitution provides that the right to bail shall not be impaired, thus:

Sec. 13. 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.

Jurisprudence on extradition is but in its infancy in this jurisdiction. Nonetheless, this is not the first time that this Court has an occasion to resolve the question of whether a prospective extraditee may be granted bail.

In *Government of United States of America v. Hon. Guillermo G. Purganan*, Presiding Judge, RTC of Manila, Branch 42, and *Mark B. Jimenez, a.k.a. Mario Batacan Crespo*,^[1] this Court, speaking through then Associate Justice Artemio V. Panganiban, later Chief Justice, held that the constitutional provision on bail does not apply to extradition proceedings. It is "available only in criminal proceedings," thus:

x x x. As suggested by the use of the word "conviction," the constitutional provision on bail quoted above, as well as Section 4, Rule 114 of the Rules of Court, applies only when a person has been arrested and detained for violation of Philippine criminal laws. It does not apply to extradition proceedings because extradition courts do not render judgments of conviction or acquittal.

Moreover, the constitutional right to bail "flows from the presumption of innocence in favor of every accused who should not be subjected to the loss of freedom as thereafter he would be entitled to acquittal, unless his guilt be proved beyond reasonable doubt" (*De la Camara v. Enage*, 41 SCRA 1, 6, September 17, 1971, per Fernando, J., later CJ). It follows that the constitutional provision on bail will not apply to a case like extradition, where the presumption of innocence is not at issue.

The provision in the Constitution stating that the "right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended" does not detract from the rule that the constitutional right to bail is available only in criminal proceedings. It must be noted that the suspension of the privilege of the writ of habeas corpus finds application "only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion" (Sec. 18, Art. VIII, Constitution). Hence, the second sentence in the constitutional provision on bail merely emphasizes the right to bail in criminal proceedings for the aforementioned offenses. It cannot be taken to mean that the right is available even in extradition proceedings that are not criminal in nature.

At first glance, the above ruling applies squarely to private respondent's case. However, this Court cannot ignore the following trends in international law: (1) the growing importance of the individual person in public international law who, in the 20th century, has gradually attained global recognition; (2) the higher value now being given to human rights in the international sphere; (3) the corresponding duty of countries to observe these universal human rights in fulfilling their treaty obligations; and (4) the duty of this Court to balance the rights of the individual under our fundamental law, on one hand, and the law on extradition, on the other.

The modern trend in public international law is the primacy placed on the worth of the individual person and the sanctity of human rights. Slowly, the recognition that the individual person may properly be a subject of international law is now taking root. The vulnerable doctrine that the subjects of international law are limited only to states was dramatically eroded towards the second half of the past century. For one, the Nuremberg and Tokyo trials after World War II resulted in the unprecedented spectacle of individual defendants for acts characterized as violations of the laws of war, crimes against peace, and crimes against humanity. Recently, under the Nuremberg principle, Serbian leaders have been persecuted for war crimes and crimes against humanity committed in the

former Yugoslavia. These significant events show that the individual person is now a valid subject of international law.

On a more positive note, also after World War II, both international organizations and states gave recognition and importance to human rights. Thus, on December 10, 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights in which the right to life, liberty and all the other fundamental rights of every person were proclaimed. While not a treaty, the principles contained in the said Declaration are now recognized as customarily binding upon the members of the international community. Thus, in *Mejoff v. Director of Prisons*,^[2] this Court, in granting bail to a prospective deportee, held that under the Constitution,^[3] the principles set forth in that Declaration are part of the law of the land. In 1966, the UN General Assembly also adopted the International Covenant on Civil and Political Rights which the Philippines signed and ratified. Fundamental among the rights enshrined therein are the rights of every person to life, liberty, and due process.

The Philippines, along with the other members of the family of nations, committed to uphold the fundamental human rights as well as value the worth and dignity of every person. This commitment is enshrined in Section II, Article II of our Constitution which provides: "The State values the dignity of every human person and guarantees full respect for human rights." The Philippines, therefore, has the responsibility of protecting and promoting the right of every person to liberty and due process, ensuring that those detained or arrested can participate in the proceedings before a court, to enable it to decide without delay on the legality of the detention and order their release if justified. In other words, the Philippine authorities are under obligation to make available to every person under detention such remedies which safeguard their fundamental right to liberty. These remedies include the right to be admitted to bail. While this Court in *Purganan* limited the exercise of the right to bail to criminal proceedings, however, in light of the various international treaties giving recognition and protection to human rights, particularly the right to life and liberty, a reexamination of this Court's ruling in *Purganan* is in order.

First, we note that the exercise of the State's power to deprive an individual of his liberty is not necessarily limited to criminal proceedings. Respondents in administrative proceedings, such as deportation and quarantine,^[4] have likewise been detained.

Second, to limit bail to criminal proceedings would be to close our eyes to our jurisprudential history. Philippine jurisprudence has not limited the exercise of the right to bail to criminal proceedings only. This Court has admitted to bail persons who are not involved in criminal proceedings. In fact, bail has been allowed in this jurisdiction to persons in detention during the pendency of administrative proceedings, taking into cognizance the obligation of the Philippines under international conventions to uphold human rights.

The 1909 case of *US v. Go-Sioco*^[5] is illustrative. In this case, a Chinese facing deportation for failure to secure the necessary certificate of registration was granted bail pending his appeal. After noting that the prospective deportee had committed no crime, the Court opined that "To refuse him bail is to treat him as a person who has committed the most serious crime known to law;" and that while deportation is not a criminal proceeding, some of the machinery used "is the machinery of criminal law." Thus, the provisions relating to bail was applied to deportation proceedings.

In *Mejoff v. Director of Prisons*^[6] and *Chirskoff v. Commission of Immigration*,^[7] this Court ruled that foreign nationals against whom no formal criminal charges have been filed may be released on bail pending the finality of an order of deportation. As previously stated, the Court in *Mejoff* relied upon the Universal declaration of Human Rights in sustaining the detainee's right to bail.

If bail can be granted in deportation cases, we see no justification why it should not also be allowed in extradition cases. Likewise, considering that the Universal Declaration of Human Rights applies to deportation cases, there is

no reason why it cannot be invoked in extradition cases. After all, both are administrative proceedings where the innocence or guilt of the person detained is not in issue.

Clearly, the right of a prospective extraditee to apply for bail in this jurisdiction must be viewed in the light of the various treaty obligations of the Philippines concerning respect for the promotion and protection of human rights. Under these treaties, the presumption lies in favor of human liberty. Thus, the Philippines should see to it that the right to liberty of every individual is not impaired.

Section 2(a) of Presidential Decree (P.D.) No. 1069 (The Philippine Extradition Law) defines "extradition" as "the removal of an accused from the Philippines with the object of placing him at the disposal of foreign authorities to enable the requesting state or government to hold him in connection with any criminal investigation directed against him or the execution of a penalty imposed on him under the penal or criminal law of the requesting state or government."

Extradition has thus been characterized as the right of a foreign power, created by treaty, to demand the surrender of one accused or convicted of a crime within its territorial jurisdiction, and the correlative duty of the other state to surrender him to the demanding state.[8] It is not a criminal proceeding.[9] Even if the potential extraditee is a criminal, an extradition proceeding is not by its nature criminal, for it is not punishment for a crime, even though such punishment may follow extradition.[10] It is *sui generis*, tracing its existence wholly to treaty obligations between different nations.[11] It is not a trial to determine the guilt or innocence of the potential extraditee.[12] Nor is it a full-blown civil action, but one that is merely administrative in character.[13] Its object is to prevent the escape of a person accused or convicted of a crime and to secure his return to the state from which he fled, for the purpose of trial or punishment.[14]

But while extradition is not a criminal proceeding, it is characterized by the following: (a) it entails a deprivation of liberty on the part of the potential extraditee and (b) the means employed to attain the purpose of extradition is also "the machinery of criminal law." This is shown by Section 6 of P.D. No. 1069 (The Philippine Extradition Law) which mandates the "immediate arrest and temporary detention of the accused" if such "will best serve the interest of justice." We further note that Section 20 allows the requesting state "in case of urgency" to ask for the "provisional arrest of the accused, pending receipt of the request for extradition;" and that release from provisional arrest "shall not prejudice re-arrest and extradition of the accused if a request for extradition is received subsequently."

Obviously, an extradition proceeding, while ostensibly administrative, bears all earmarks of a criminal process. A potential extraditee may be subjected to arrest, to a prolonged restraint of liberty, and forced to transfer to the demanding state following the proceedings. "Temporary detention" may be a necessary step in the process of extradition, but the length of time of the detention should be reasonable.

Records show that private respondent was arrested on September 23, 1999, and remained incarcerated until December 20, 2001, when the trial court ordered his admission to bail. In other words, he had been detained for over two (2) years without having been convicted of any crime. By any standard, such an extended period of detention is a serious deprivation of his fundamental right to liberty. In fact, it was this prolonged deprivation of liberty which prompted the extradition court to grant him bail.

While our extradition law does not provide for the grant of bail to an extraditee, however, there is no provision prohibiting him or her from filing a motion for bail, a right to due process under the Constitution.

The applicable standard of due process, however, should not be the same as that in criminal proceedings. In the latter, the standard of due process is premised on the presumption of innocence of the accused. As Purganan

correctly points out, it is from this major premise that the ancillary presumption in favor of admitting to bail arises. Bearing in mind the purpose of extradition proceedings, the premise behind the issuance of the arrest warrant and the "temporary detention" is the possibility of flight of the potential extraditee. This is based on the assumption that such extraditee is a fugitive from justice.[15] Given the foregoing, the prospective extraditee thus bears the onus probandi of showing that he or she is not a flight risk and should be granted bail.

The time-honored principle of *pacta sunt servanda* demands that the Philippines honor its obligations under the Extradition Treaty it entered into with the Hong Kong Special Administrative Region. Failure to comply with these obligations is a setback in our foreign relations and defeats the purpose of extradition. However, it does not necessarily mean that in keeping with its treaty obligations, the Philippines should diminish a potential extraditee's rights to life, liberty, and due process. More so, where these rights are guaranteed, not only by our Constitution, but also by international conventions, to which the Philippines is a party. We should not, therefore, deprive an extraditee of his right to apply for bail, provided that a certain standard for the grant is satisfactorily met.

An extradition proceeding being *sui generis*, the standard of proof required in granting or denying bail can neither be the proof beyond reasonable doubt in criminal cases nor the standard of proof of preponderance of evidence in civil cases. While administrative in character, the standard of substantial evidence used in administrative cases cannot likewise apply given the object of extradition law which is to prevent the prospective extraditee from fleeing our jurisdiction. In his Separate Opinion in *Purganan*, then Associate Justice, now Chief Justice Reynato S. Puno, proposed that a new standard which he termed "clear and convincing evidence" should be used in granting bail in extradition cases. According to him, this standard should be lower than proof beyond reasonable doubt but higher than preponderance of evidence. The potential extraditee must prove by "clear and convincing evidence" that he is not a flight risk and will abide with all the orders and processes of the extradition court.

In this case, there is no showing that private respondent presented evidence to show that he is not a flight risk. Consequently, this case should be remanded to the trial court to determine whether private respondent may be granted bail on the basis of "clear and convincing evidence."

WHEREFORE, we DISMISS the petition. This case is REMANDED to the trial court to determine whether private respondent is entitled to bail on the basis of "clear and convincing evidence." If not, the trial court should order the cancellation of his bail bond and his immediate detention; and thereafter, conduct the extradition proceedings with dispatch.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Chico-Nazario, Tinga, Garcia, Velasco, Jr., and Nachura, JJ., concur.

[1] G.R. No. 148571, September 24, 2002, 389 SCRA 623, 664.

[2] 90 Phil. 70 (1951).

[3] Sec. 2, Art. II states "The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

[4] In cases involving quarantine to prevent the spread of communicable diseases, bail is not available. See *State v. Hutchinson*, 18 So.2d. 723, 246 Ala. 48; *Varholc v. Sweat*, 15 So.2d. 267, 153 Fla. 571, *Baker v. Strautz*, 54

NE2d. 441, 386 Ill. 360.

[5] 12 Phil. 490 (1909).

[6] Supra, footnote 2.

[7] 90 Phil. 256 (1951).

[8] Factor v. Laubenheimer, 290 US 276, 78 L. Ed. 315, 54 S. Ct. 101; Terlindon v. Ames, 184 US 270, 46 L.Ed. 534, 22 S.Ct. 484; Fong Yue Ting v. US, 149 US 698, 37 L.Ed. 905, 13 S.Ct. 1016; Fitzpatrick v. Williams, 46 F2d. 40; US v. Godwin, 97 F. Supp. 252, affd. 191 F2d. 932; Dominguez v. State, 234 SW 701, 90 Tex. Crim. 92.

[9] Secretary of Justice v. Lantion, G.R. No. 139465, October 17, 2000, 343 SCRA 377.

[10] US ex rel Oppenheim v. Hecht, 16 F2d. 955, cert den. 273 US 969, 71 L. Ed. 883, 47 S. Ct. 572.

[11] State v. Chase, 107 So. 541, 91 Fla. 413; State v. Quigg, 108 So. 409, 91 Fla. 197.

[12] Benson v. McMahon, 127 US 457, 32 L. Ed. 234, 8 S. Ct. 1240; Jimenez v. Aristequieta, 311 F2d. 547, stay den. 314 F2d. 649.

[13] Spatola v. US, 741 F. Supp. 362, Affd. 925 F2d. 615.

[14] Re Henderson, 145 NW 574, 27 ND 155; State ex rel Tresoder v. Remann, 4 P2d. 866, 165 Wash. 92.

[15] Beaulieu v. Hartigan, 554 F.2d 1.

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