

**EDUARDO TOLENTINO RODRIGUEZ AND IMELDA GENER
RODRIGUEZ, PETITIONERS, VS. THE HONORABLE PRESIDING JUDGE
OF THE REGIONAL TRIAL COURT OF MANILA – BRANCH 17,
GOVERNMENT OF THE UNITED STATES OF AMERICA...**

G.R. NO. 157977. February 27, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a special civil action for certiorari and prohibition directed against the Orders dated May 7, 2003[1] and May 9, 2003[2] of the Regional Trial Court of Manila, Branch 17 in Case No. 01-190375, which cancelled the bail of petitioners and denied their motion for reconsideration, respectively.

The case stemmed from the petition for extradition filed on March 12, 2001 by the Government of the United States of America (US government) through the Department of Justice (DOJ) against the petitioners.

After their arrest, petitioners applied for bail which the trial court granted on September 25, 2001. The bail was set for one million pesos for each. Petitioners then posted cash bonds. The US government moved for reconsideration of the grant of bail, but the motion was denied by the trial court. Unsatisfied, the US government filed a petition for certiorari with this Court, entitled *Government of the United States of America, represented by the Philippine Department of Justice v. Hon. Rodolfo A. Ponferrada, etc., et al.*, and docketed as G.R. No. 151456.

Thereafter, we directed the trial court to resolve the matter of bail which, according to its November 28, 2001 Order,[3] shall be subject to whatever ruling that this Court may have in the similar case of *Mark Jimenez* entitled *Government of the United States of America v. Purganan*,[4] docketed as G.R. No. 148571. In compliance with our directive, the trial court, without prior notice and hearing, cancelled the cash bond of the petitioners and ordered the issuance of a warrant of arrest,[5] to wit:

Accordingly, following the En Banc Decision of the Supreme Court in G.R. No. 148571 dated September 24, 2002 to the effect that extraditees are not entitled to bail... while the extradition proceedings are pending...' (page 1, En Banc Decision in G.R. No. 148571), let a warrant of arrest issue against the herein respondents sans any bail, for implementation by the Sheriff or any member of any law enforcement agency in line with Section 19 of Presidential Decree No. 1069.

IT IS SO ORDERED.

Petitioners filed a very urgent motion for the reconsideration of the cancellation of their bail. The motion was heard and denied on May 9, 2003.[6]

Having no alternative remedy, petitioners filed the present petition on the following grounds:

I

...THE RESPONDENT JUDGE COMMITTED SUCH SERIOUS AND GRAVE ABUSE OF DISCRETION

TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN CANCELLING THE BAIL OF HEREIN PETITIONERS WITHOUT PRIOR NOTICE AND HEARING OF ITS CANCELLATION.

II

...THE RESPONDENT JUDGE COMMITTED SUCH SERIOUS AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT CONSIDERING CERTAIN SPECIAL CIRCUMSTANCES ATTENDANT TO THE PRESENT CASE, AS AN EXCEPTION TO THE GENERAL RULE OF "NO-BAIL" IN EXTRADITION CASES WHEN PETITIONERS' CASH BAIL WAS UNILATERALLY CANCELLED.

III

"THE RESPONDENT JUDGE COMMITTED SUCH SERIOUS AND GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE WARRANT OF ARREST WITHOUT CONSIDERING THE HEREIN PETITIONERS' SPECIAL CIRCUMSTANCE OF VOLUNTARY EXTRADITION PRIOR TO CANCELLING THEIR CASH BAIL.[7]

Once again we face the controversial matter of bail in extradition cases. We are asked to resolve twin issues: First, in an extradition case, is prior notice and hearing required before bail is cancelled? Second, what constitutes a "special circumstance" to be exempt from the no-bail rule in extradition cases?

Petitioners assert that their bail cannot be cancelled without due process of law. By way of analogy, they point to Rule 114, Section 21[8] of the Rules of Court where the surety or bonding company is required to be notified and allowed to show cause why the bail bond should not be cancelled. They say that if the rules grant this opportunity to surety and bonding companies, the more reason then that in an extradition case the same should be afforded.

Petitioners also contend that this Court's directive in G.R. No. 151456 did not in any way authorize the respondent court to cancel their bail. Petitioners aver that respondent court should have first determined the facts to evaluate if petitioners were entitled to continuance of their bail, e.g. their willingness to go on voluntary extradition, which respondent court should have considered a special circumstance.

Respondents, for their part, argue that prior notice and hearing are not required to cancel petitioners' bail, and the issuance of a warrant of arrest ex parte against an extraditee is not a violation of the due process clause. Further, respondents maintain that prior notice and hearing would defeat the purpose of the arrest warrant since it could give warning that respondents would be arrested and even encourage them to flee.

Besides, even granting that prior notice and hearing are indeed required, respondents contend that petitioners had been effectively given prior notice and opportunity to be heard, because the trial court's order clearly stated that the matter of bail shall be subject to whatever ruling the Supreme Court may render in the similar extradition case of *Government of the United States of America v. Purganan*.^[9] Petitioners did not contest the aforementioned order. Respondents declare that petitioners were likewise notified of this Court's directives to the trial court to resolve the matter of their bail.

More significantly, petitioners claim that their bail should not have been cancelled since their situation falls within the exception to the general rule of no-bail. They allege that their continuous offer for voluntary extradition is a special circumstance that should be considered in determining that their temporary liberty while on bail be allowed to continue. They cite that petitioner Eduardo is in fact already in the United States attending the trial. They also have not taken flight as fugitives. Besides, according to petitioners, the State is more than assured they would not flee because their passports were already confiscated and there is an existing hold-departure order against them. Moreover, petitioners assert, they are not a danger to the community.

Respondents counter that petitioner Imelda Gener Rodriguez did not show her good faith by her continued refusal to appear before the respondent court. Further, the reasons of petitioners do not qualify as compelling or special circumstances. Moreover, the special circumstance of voluntary surrender of petitioner Eduardo is separate and distinct from petitioner Imelda's.

Additionally, respondents maintain that the ruling in the case of *Atong Ang*[10] has no applicability in the instant case. Ang's bail was allowed because the English translation of a testimony needed to determine probable cause in Ang's case would take time. This special circumstance is not attendant in this case.

The issue of prior notice and hearing in extradition cases is not new. In *Secretary of Justice v. Lantion*,[11] by a vote of nine to six, we initially ruled that notice and hearing should be afforded the extraditee even when a possible extradition is still being evaluated.[12] The Court, deliberating on a motion for reconsideration also by a vote of nine to six, qualified and declared that prospective extraditees are entitled to notice and hearing only when the case is filed in court and not during the process of evaluation.[13]

In the later case of *Purganan*, eight justices concurred that a possible extraditee is not entitled to notice and hearing before the issuance of a warrant of arrest while six others dissented.

Now, we are confronted with the question of whether a prospective extraditee is entitled to notice and hearing before the cancellation of his or her bail.

The issue has become moot and academic insofar as petitioner Eduardo Rodriguez is concerned. He is now in the USA facing the charges against him. But co-petitioner Imelda Gener Rodriguez is here and stands on a different footing. We agree that her bail should be restored.

In *Purganan*, we said that a prospective extraditee is not entitled to notice and hearing before the issuance of a warrant of arrest,[14] because notifying him before his arrest only tips him of his pending arrest. But this is for cases pending the issuance of a warrant of arrest, not in a cancellation of a bail that had been issued after determination that the extraditee is a no-flight risk. The policy is that a prospective extraditee is arrested and detained to avoid his flight from justice.[15] On the extraditee lies the burden of showing that he will not flee once bail is granted.[16] If after his arrest and if the trial court finds that he is no flight risk, it grants him bail. The grant of the bail, presupposes that the co-petitioner has already presented evidence to prove her right to be on bail, that she is no flight risk, and the trial court had already exercised its sound discretion and had already determined that under the Constitution and laws in force, co-petitioner is entitled to provisional release.

Under these premises, and with the trial court's knowledge that in this case, co-petitioner has offered to go on voluntary extradition; that she and her husband had posted a cash bond of P1 million each; that her husband had already gone on voluntary extradition and is presently in the USA undergoing trial; that the passport of co-petitioner is already in the possession of the authorities; that she never attempted to flee; that there is an existing hold-departure order against her; and that she is now in her sixties, sickly and under medical treatment, we believe that the benefits of continued temporary liberty on bail should not be revoked and their grant of bail should not be cancelled, without the co-petitioner being given notice and without her being heard why her temporary liberty should not be discontinued.

We emphasize that bail may be granted to a possible extraditee only upon a clear and convincing showing (1) that he will not be a flight risk or a danger to the community, and (2) that there exist special, humanitarian and compelling circumstances.[17]

The trial court's immediate cancellation of the bail of petitioners is contrary to our ruling in *Purganan*, and it had misread and misapplied our directive therein.

Now, was the order to issue warrant of arrest against petitioners and to cancel the bail of extraditees a grave abuse of discretion of the trial court?

Grave abuse of discretion is capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law.[18] In our view, the cancellation of co-petitioner's bail, without prior notice and hearing, could be considered a violation of co-petitioner's right to due process tantamount to grave abuse of discretion.

Finally, considering that remanding the case to the court a quo will only delay the final resolution of the case as in all probability it would only end up with us again,[19] we will decide if Imelda's bail was validly cancelled.

In *Purganan*, we held also that the grounds used by the highest court in the requesting state for the grant of bail may be considered, under the principle of reciprocity.[20]

Considering that she has not been shown to be a flight risk nor a danger to the community, she is entitled to notice and hearing before her bail could be cancelled. Based on the record, we find that, absent prior notice and hearing, the bail's cancellation was in violation of her right to due process.

WHEREFORE, the instant petition is GRANTED IN PART. The Orders dated May 7, 2003 and May 9, 2003 of the Regional Trial Court of Manila, Branch 17 in Case No. 01-190375 are REVERSED and SET ASIDE, as far as petitioner IMELDA GENER RODRIGUEZ is concerned. We hereby (1) declare IMELDA GENER RODRIGUEZ entitled to bail, (2) order her cancelled bail restored, and (3) order the warrant for her arrest revoked.

SO ORDERED.

Panganiban, C.J., Puno, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales Azcuna, Tinga, Chico-Nazario and Garcia, JJ., concur.
Corona and Callejo, Sr., JJ., on leave.

[1] Rollo, pp. 24-25.

[2]Id. at 26.

[3]Id. at 46.

[4]24 September 2002, 389 SCRA 623.

[5] Rollo, pp. 24-25.

[6]Id. at 26.

[7] Id. at 11-12.

[8] SEC. 21. Forfeiture of bail. " – When the presence of the accused is required by the court or these Rules, his bondsmen shall be notified to produce him before the court on a given date and time. If the accused fails to appear in person as required, his bail shall be declared forfeited and the bondsmen given thirty (30) days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bail...

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

[10]District Magistrate Lawrence Leavitt of the U.S. District Court of Nevada granted a \$300,000 bail to Charlie "Atong" Ang, who is sought to be extradited by the Philippine government. (visited February 6, 2006).

[11]G.R. No. 139465, 18 January 2000, 322 SCRA 160.

[12] Id. at 193-194.

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

[14]Government of the United States of America v. Purganan, supra note 9 at 661-663.

[15] Id. at 656.

[16]Id. at 674.

[17] Id. at 667.

[18[] Zarate v. Maybank Philippines, Inc., G.R. No. 160976, 8 June 2005,459 SCRA 785, 794.

[19]Reyes v. Court of Appeals, G.R. No. 154448, 15 August 2003 409 SCRA 267, 278 citing Fernandez v. National Labor Relations Commission, G.R. No. 105892, 28 January 1998, 285 SCRA 149, 170.

[20] Government of the United States of America v. Purganan, supra note 9 at 667-668, 674. In the Urgent Ex-Parte Motion To Be Confined and Detained in a Hospital dated September 5, 2001 filed by co-petitioner Imelda, she alleged that she was already 58 years old and sickly. She attached in her Motion a letter from her doctor stating that she had an operation for breast cancer and needed a number of medical and laboratory tests (Records, Vol. I, p. 359). In a subsequent Urgent Motion for Bail Ad Cautelam, the petitioners also attached the same letter. Her submissions have not been contradicted. In our view, Imelda's poor health and advanced age may be considered special circumstances in her favor.

Cf. Salerno v. United States, 878 F.2d 317 (9[th] Cir. 1989), the US court listed some special circumstances for the grant of bail in extradition cases. Among these circumstances are: the raising of substantial claims which have a high probability of success; a serious deterioration in health of extraditee while in custody; and unusual delay in the appeal process. In United States v. Taitz, 130 F.R.D. 442, 446 (SD Cal. 1990), the US district court, relying on Salerno v. United States, considered the health of Taitz, a prospective extraditee, as a special circumstance.

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