

**JOSE S. BAGCAL, PETITIONER, VS. HON. ROLANDO R. VILLARAZA,
PRESIDING JUDGE OF THE CITY COURT OF CAGAYAN DE ORO CITY,
BRANCH II, RESPONDENT.**

G.R. No. 61770. January 31, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Acting on Jose S. Bagcal's petition asking for the issuance of a writ of habeas corpus alleging that he was illegally detained, We issued the writ on October 19, 1982, returnable to the Executive Judge of the Court of First Instance (now Regional Trial Court) of Cagayan de Oro City, on November 8, 1982.

After due hearing, Judge Eulalio D. Rosete rendered a decision on November 17, 1982, with the following disposition:

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered denying the petition for the release of the petitioner but ordering the Respondent Hon. Rolando R. Villaraza to hear the petition for bail filed by the petitioner at the soonest time and as speedy as possible, to determine only if the evidence supporting the charge of murder is strong, and if not, to fix the bail."

Petitioner has appealed the decision to Us; he asks that he be immediately released from detention. Respondent Judge Rolando R. Villaraza, on the other hand, has asked Us to clarify his role in respect of the hearing for bail.

Petitioner was arrested on February 28, 1982, by the Philippine Constabulary. The arrest was without warrant. He has been detained at Camp Alagar, Cagayan de Oro City, since his arrest to the present.

On August 6, 1982, the City Fiscal of Cagayan de Oro filed an information for murder against petitioner with the Municipal Trial Court of Cagayan de Oro presided by respondent Judge Rolando R. Villaraza. The information was accompanied by the affidavits of several persons. They were not subscribed before Judge Villaraza who did not ask the affiants to ratify their oaths nor did he ask them searching questions. The information has no certification by the City Fiscal that he had conducted a preliminary investigation. Indeed, if the City Fiscal had conducted a preliminary investigation, the information should have been filed in the Court of First Instance which had jurisdiction to try the case on its merits. It is obvious that the information was filed with Judge Villaraza so that he would conduct a preliminary examination and thereafter issue a warrant of arrest.

Judge Villaraza under the circumstances mentioned above issued a warrant for the arrest of petitioner. The circumstances attending the issuance of the warrant of arrest have been invoked in the petition for habeas corpus. And it is the warrant of arrest that has been invoked in the return of the writ to justify petitioner's detention and it is also the basis for the decision of Judge Rosete on denying the petition.

Petitioner claims, and Judge Rosete agrees, that respondent Judge Villaraza should not have issued a warrant of arrest without a preliminary examination of the witnesses for the prosecution. However, Judge Rosete held, and We agree, that although the warrant of arrest was irregularly issued, any infirmity attached to it was cured when

petitioner submitted himself to the jurisdiction of the court by applying for bail, submitting a memorandum in support thereof, and filing a motion for reconsideration when his application was denied.

WHEREFORE, We affirm the decision of Judge Rosete with the sole modification that the Executive Judge of the Regional Trial Court in Cagayan de Oro City and not the municipal trial court, should conduct a hearing on the application for bail. If he finds the evidence against petitioner to be strong, he should deny bail but if he finds the evidence not sufficiently strong, he should grant bail. The record of the case against petitioner should be elevated to the aforesaid Executive Judge.

SO ORDERED.

Makasiar, Aquino, Concepcion Jr., Guerrero and Escolin, JJ., concur.

De Castro, J., took no part.

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