

EN BANC

[G.R. No. 213847, August 18, 2015]

**JUAN PONCE ENRILE, PETITIONER, VS. SANDIGANBAYAN
(THIRD DIVISION), AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

DECISION

BERSAMIN, J.:

The decision whether to detain or release an accused before and during trial is ultimately an incident of the judicial power to hear and determine his criminal case. The strength of the Prosecution's case, albeit a good measure of the accused's propensity for flight or for causing harm to the public, is subsidiary to the primary objective of bail, which is to ensure that the accused appears at trial.^[1]

The Case

Before the Court is the petition for *certiorari* filed by Senator Juan Ponce Enrile to assail and annul the resolutions dated July 14, 2014^[2] and August 8, 2014^[3] issued by the Sandiganbayan (Third Division) in Case No. SB-14-CRM-0238, where he has been charged with plunder along with several others. Enrile insists that the resolutions, which respectively denied his *Motion To Fix Bail* and his *Motion For Reconsideration*, were issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Antecedents

On June 5, 2014, the Office of the Ombudsman charged Enrile and several others with plunder in the Sandiganbayan on the basis of their purported involvement in the diversion and misuse of appropriations under the Priority Development Assistance Fund (PDAF).^[4] On June 10, 2014 and June 16, 2014, Enrile respectively filed his *Omnibus Motion*^[5] and *Supplemental Opposition*,^[6] praying, among others, that he be allowed to post bail should probable cause be found against him. The motions were heard by the Sandiganbayan after the Prosecution filed its *Consolidated Opposition*.^[7]

On July 3, 2014, the Sandiganbayan issued its resolution denying Enrile's motion, particularly on the matter of bail, on the ground of its prematurity considering that Enrile had not yet then voluntarily surrendered or been placed under the custody of the law.^[8] Accordingly, the Sandiganbayan ordered the arrest of Enrile.^[9]

On the same day that the warrant for his arrest was issued, Enrile voluntarily surrendered to Director Benjamin Magalong of the Criminal Investigation and Detection Group (CIDG) in Camp Crame, Quezon City, and was later on confined at

the Philippine National Police (PNP) General Hospital following his medical examination.^[10]

Thereafter, Enrile filed his *Motion for Detention at the PNP General Hospital*,^[11] and his *Motion to Fix Bail*,^[12] both dated July 7, 2014, which were heard by the Sandiganbayan on July 8, 2014.^[13] In support of the motions, Enrile argued that he should be allowed to post bail because: (a) the Prosecution had not yet established that the evidence of his guilt was strong; (b) although he was charged with plunder, the penalty as to him would only be *reclusion temporal*, not *reclusion perpetua*; and (c) he was not a flight risk, and his age and physical condition must further be seriously considered.

On July 14, 2014, the Sandiganbayan issued its first assailed resolution denying Enrile's *Motion to Fix Bail*, disposing thusly:

x x x [I]t is only after the prosecution shall have presented its evidence and the Court shall have made a determination that the evidence of guilt is not strong against accused Enrile can he demand bail as a matter of right. Then and only then will the Court be duty-bound to fix the amount of his bail.

To be sure, no such determination has been made by the Court. In fact, accused Enrile has not filed an application for bail. Necessarily, no bail hearing can even commence. It is thus exceedingly premature for accused Enrile to ask the Court to fix his bail.

x x x x

Accused Enrile next argues that the Court should grant him bail because while he is charged with plunder, "*the maximum penalty that may be possibly imposed on him is reclusion temporal, not reclusion perpetua.*" He anchors this claim on Section 2 of R.A. No. 7080, as amended, and on the allegation that he is over seventy (70) years old and that he voluntarily surrendered. "*Accordingly, it may be said that the crime charged against Enrile is not punishable by reclusion perpetua, and thus bailable.*"

The argument has no merit.

x x x x

x x x [F]or purposes of bail, the presence of mitigating circumstance/s is not taken into consideration. These circumstances will only be appreciated in the *imposition of the proper penalty* after trial should the accused be found guilty of the offense charged. x x x

x x x x

Lastly, accused Enrile asserts that the Court should already fix his bail because he is not a flight risk and his physical condition must also be seriously considered by the Court.

Admittedly, the accused's age, physical condition and his being a flight risk are among the factors that are considered in fixing a reasonable amount of bail. However, as explained above, it is premature for the Court to fix the amount of bail without an anterior showing that the evidence of guilt against accused Enrile is not strong.

WHEREFORE, premises considered, accused Juan Ponce Enrile's Motion to Fix Bail dated July 7, 2014 is **DENIED** for lack of merit.

SO ORDERED.^[14]

On August 8, 2014, the Sandiganbayan issued its second assailed resolution to deny Enrile's motion for reconsideration filed vis-à-vis the July 14, 2014 resolution.^[15]

Enrile raises the following grounds in support of his petition for *certiorari*, namely:

- A. Before judgment of the Sandiganbayan, Enrile is bailable as a matter of right. Enrile may be deemed to fall within the exception only upon concurrence of two (2) circumstances: (i) where the offense is punishable by *reclusion perpetua*, and (ii) when evidence of guilt is strong.**

x x x x

- B. The prosecution failed to show clearly and conclusively that Enrile, if ever he would be convicted, is punishable by *reclusion perpetua*; hence, Enrile is entitled to bail as a matter of right.**

x x x x

- C. The prosecution failed to show clearly and conclusively that evidence of Enrile's guilt (if ever) is strong; hence, Enrile is entitled to bail as a matter of right.**

x x x x

- D. At any rate, Enrile may be bailable as he is not a flight risk.**

^[16]

Enrile claims that before judgment of conviction, an accused is entitled to bail as matter of right; that it is the duty and burden of the Prosecution to show clearly and conclusively that Enrile comes under the exception and cannot be excluded from enjoying the right to bail; that the Prosecution has failed to establish that Enrile, if convicted of plunder, is punishable by *reclusion perpetua* considering the presence of two mitigating circumstances – his age and his voluntary surrender; that the Prosecution has not come forward with proof showing that his guilt for the crime of plunder is strong; and that he should not be considered a flight risk taking into account that he is already over the age of 90, his medical condition, and his social standing.

In its *Comment*,^[17] the Ombudsman contends that Enrile's right to bail is discretionary as he is charged with a capital offense; that to be granted bail, it is mandatory that a bail hearing be conducted to determine whether there is strong evidence of his guilt, or the lack of it; and that entitlement to bail considers the imposable penalty, regardless of the attendant circumstances.

Ruling of the Court

The petition for *certiorari* is meritorious.

1.

Bail protects the right of the accused to due process and to be presumed innocent

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.^[18] The presumption of innocence is rooted in the guarantee of due process, and is safeguarded by the constitutional right to be released on bail,^[19] and further binds the court to wait until after trial to impose any punishment on the accused.^[20]

It is worthy to note that bail is not granted to prevent the accused from committing additional crimes.^[21] The purpose of bail is to guarantee the appearance of the accused at the trial, or whenever so required by the trial court. The amount of bail should be high enough to assure the presence of the accused when so required, but it should be no higher than is reasonably calculated to fulfill this purpose.^[22] Thus, bail acts as a reconciling mechanism to accommodate both the accused's interest in his provisional liberty before or during the trial, and the society's interest in assuring the accused's presence at trial.^[23]

2.

Bail may be granted as a matter of right or of discretion

The right to bail is expressly afforded by Section 13, Article III (Bill of Rights) of the Constitution, *viz.*:

x x x 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.

This constitutional provision is repeated in Section 7, Rule 114^[24] of the Rules of Court, as follows:

Section 7. *Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable.* — No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life

imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.

A capital offense in the context of the rule refers to an offense that, under the law existing at the time of its commission and the application for admission to bail, may be punished with death.^[25]

The general rule is, therefore, that any person, before being convicted of any criminal offense, shall be bailable, unless he is charged with a capital offense, or with an offense punishable with *reclusion perpetua* or life imprisonment, and the evidence of his guilt is strong. Hence, from the moment he is placed under arrest, or is detained or restrained by the officers of the law, he can claim the guarantee of his provisional liberty under the Bill of Rights, and he retains his right to bail unless he is charged with a capital offense, or with an offense punishable with *reclusion perpetua* or life imprisonment, and the evidence of his guilt is strong.^[26] Once it has been established that the evidence of guilt is strong, no right to bail shall be recognized.^[27]

As a result, all criminal cases within the competence of the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court are bailable as matter of right because these courts have no jurisdiction to try capital offenses, or offenses punishable with *reclusion perpetua* or life imprisonment. Likewise, bail is a matter of right prior to conviction by the Regional Trial Court (RTC) for any offense not punishable by death, *reclusion perpetua*, or life imprisonment, or even prior to conviction for an offense punishable by death, *reclusion perpetua*, or life imprisonment when evidence of guilt is not strong.^[28]

On the other hand, the granting of bail is discretionary: (1) upon conviction by the RTC of an offense not punishable by death, *reclusion perpetua* or life imprisonment;^[29] or (2) if the RTC has imposed a penalty of imprisonment exceeding six years, provided none of the circumstances enumerated under paragraph 3 of Section 5, Rule 114 is present, as follows:

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

3.

Admission to bail in offenses punished by death, or life imprisonment, or *reclusion perpetua* is subject to judicial discretion