

THIRD DIVISION

[G.R. No. 189122, March 17, 2010]

JOSE ANTONIO LEVISTE, PETITIONER, VS. THE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

CORONA, J.:

Bail, the security given by an accused who is in the custody of the law for his release to guarantee his appearance before any court as may be required,^[1] is the answer of the criminal justice system to a vexing question: what is to be done with the accused, whose guilt has not yet been proven, in the "dubious interval," often years long, between arrest and final adjudication?^[2] Bail acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring the accused's presence at trial.^[3]

Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, the accused who has been sentenced to prison must typically begin serving time immediately unless, on application, he is admitted to bail.^[4] An accused not released on bail is incarcerated before an appellate court confirms that his conviction is legal and proper. An erroneously convicted accused who is denied bail loses his liberty to pay a debt to society he has never owed.^[5] Even if the conviction is subsequently affirmed, however, the accused's interest in bail pending appeal includes freedom pending judicial review, opportunity to efficiently prepare his case and avoidance of potential hardships of prison.^[6] On the other hand, society has a compelling interest in protecting itself by swiftly incarcerating an individual who is found guilty beyond reasonable doubt of a crime serious enough to warrant prison time.^[7] Other recognized societal interests in the denial of bail pending appeal include the prevention of the accused's flight from court custody, the protection of the community from potential danger and the avoidance of delay in punishment.^[8] Under what circumstances an accused may obtain bail pending appeal, then, is a delicate balance between the interests of society and those of the accused.^[9]

Our rules authorize the proper courts to exercise discretion in the grant of bail pending appeal to those convicted by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment. In the exercise of that discretion, the proper courts are to be guided by the fundamental principle that the **allowance of bail pending appeal should be exercised not with laxity but with grave caution and only for strong reasons**, considering that the accused has been in fact convicted by the trial court.^[10]

THE FACTS

Charged with the murder of Rafael de las Alas, petitioner Jose Antonio Leviste was convicted by the Regional Trial Court of Makati City for the lesser crime of homicide and sentenced to suffer an indeterminate penalty of six years and one day of *prision mayor* as minimum to 12 years and one day of *reclusion temporal* as maximum.^[11]

He appealed his conviction to the Court of Appeals.^[12] Pending appeal, he filed an urgent application for admission to bail pending appeal, citing his advanced age and health condition, and claiming the absence of any risk or possibility of flight on his part.

The Court of Appeals denied petitioner's application for bail.^[13] It invoked the bedrock principle in the matter of bail pending appeal, that the discretion to extend bail during the course of appeal should be exercised "with grave caution and only for strong reasons." Citing well-established jurisprudence, it ruled that bail is not a sick pass for an ailing or aged detainee or a prisoner needing medical care outside the prison facility. It found that petitioner

... failed to show that he suffers from ailment of such gravity that his continued confinement during trial will permanently impair his health or put his life in danger. x x x Notably, the physical condition of [petitioner] does not prevent him from seeking medical attention while confined in prison, though he clearly preferred to be attended by his personal physician.^[14]

For purposes of determining whether petitioner's application for bail could be allowed pending appeal, the Court of Appeals also considered the fact of petitioner's conviction. It made a preliminary evaluation of petitioner's case and made a *prima facie* determination that there was no reason substantial enough to overturn the evidence of petitioner's guilt.

Petitioner's motion for reconsideration was denied.^[15]

Petitioner now questions as grave abuse of discretion the denial of his application for bail, considering that none of the conditions justifying denial of bail under the third paragraph of Section 5, Rule 114 of the Rules of Court was present. Petitioner's theory is that, where the penalty imposed by the trial court is more than six years but not more than 20 years and the circumstances mentioned in the third paragraph of Section 5 are absent, bail **must** be granted to an appellant pending appeal.

THE ISSUE

The question presented to the Court is this: in an application for bail pending appeal by an appellant sentenced by the trial court to a penalty of imprisonment for more than six years, does the discretionary nature of the grant of bail pending appeal mean that bail should automatically be granted absent any of the circumstances mentioned in the third paragraph of Section 5, Rule 114 of the Rules of Court?

Section 5, Rule 114 of the Rules of Court provides:

Sec. 5. Bail, when discretionary. -- Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary.

The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

- (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 a 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.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case. (emphasis supplied)

Petitioner claims that, in the absence of any of the circumstances mentioned in the third paragraph of Section 5, Rule 114 of the Rules of Court, an application for bail by an appellant sentenced by the Regional Trial Court to a penalty of more than six years' imprisonment should automatically be granted.

Petitioner's stance is contrary to fundamental considerations of procedural and substantive rules.

BASIC PROCEDURAL CONCERNS FORBID GRANT OF PETITION

Petitioner filed this special civil action for certiorari under Rule 65 of the Rules of Court to assail the denial by the Court of Appeals of his urgent application for admission to bail pending appeal. While the said remedy may be resorted to challenge an interlocutory order, such remedy is proper only where the interlocutory order was rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.^[16]

Other than the sweeping averment that "[t]he Court of Appeals committed grave abuse of discretion in denying petitioner's application for bail pending appeal despite the fact that none of the conditions to justify the denial thereof under Rule 114, Section 5 [is] present, much less proven by the prosecution,"^[17] however, petitioner actually failed to establish that the Court of Appeals indeed acted with grave abuse of discretion. He simply relies on his claim that the Court of Appeals should have granted bail in view of the absence of any of the circumstances enumerated in the third paragraph of Section 5, Rule 114 of the Rules of Court. Furthermore, petitioner asserts that the Court of Appeals committed a grave error and prejudged the appeal by denying his application for bail on the ground that the evidence that he committed a capital offense was strong.

We disagree.

It cannot be said that the Court of Appeals issued the assailed resolution without or in excess of its jurisdiction. One, pending appeal of a conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is expressly declared to be **discretionary**. Two, the discretion to allow or disallow bail pending appeal in a case such as this where the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable is exclusively lodged by the rules with the appellate court. Thus, the Court of Appeals had jurisdiction to hear and resolve petitioner's urgent application for admission to bail pending appeal.

Neither can it be correctly claimed that the Court of Appeals committed grave abuse of discretion when it denied petitioner's application for bail pending appeal. **Grave abuse of discretion is not simply an error in judgment** but it is such a capricious and whimsical exercise of judgment which is tantamount to lack of jurisdiction.^[18] **Ordinary abuse of discretion is insufficient.** The abuse of discretion must be grave, that is, the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility.^[19] It must be so patent and gross as to amount to evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law. In other words, for a petition for certiorari to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion.^[20]

Petitioner never alleged that, in denying his application for bail pending appeal, the Court of Appeals exercised its judgment capriciously and whimsically. No capriciousness or arbitrariness in the exercise of discretion was ever imputed to the appellate court. Nor could any such implication or imputation be inferred. As observed earlier, the Court of Appeals exercised grave caution in the exercise of its discretion. The denial of petitioner's application for bail pending appeal was not unreasonable but was the result of a thorough assessment of petitioner's claim of ill health. By making a preliminary appraisal of the merits of the case for the purpose

of granting bail, the court also determined whether the appeal was frivolous or not, or whether it raised a substantial question. The appellate court did not exercise its discretion in a careless manner but followed doctrinal rulings of this Court.

At best, petitioner only points out the Court of Appeal's erroneous application and interpretation of Section 5, Rule 114 of the Rules of Court. However, **the extraordinary writ of certiorari will not be issued to cure errors in proceedings or erroneous conclusions of law or fact.**^[21] In this connection, *Lee v. People*^[22] is apropos:

... Certiorari may not be availed of where it is not shown that the respondent court lacked or exceeded its jurisdiction over the case, even if its findings are not correct. Its questioned acts would at most constitute errors of law and not abuse of discretion correctible by certiorari.

In other words, certiorari will issue only to correct errors of jurisdiction and not to correct errors of procedure or mistakes in the court's findings and conclusions. An interlocutory order may be assailed by certiorari or prohibition only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion. However, this Court generally frowns upon this remedial measure as regards interlocutory orders. To tolerate the practice of allowing interlocutory orders to be the subject of review by certiorari will not only delay the administration of justice but will also unduly burden the courts.^[23] (emphasis supplied)

WORDING OF THIRD PARAGRAPH OF SECTION 5, RULE 114 CONTRADICTS PETITIONER'S INTERPRETATION

The third paragraph of Section 5, Rule 114 applies to two scenarios where the penalty imposed on the appellant applying for bail is imprisonment exceeding six years. The first scenario deals with the circumstances enumerated in the said paragraph (namely, recidivism, quasi-recidivism, habitual delinquency or commission of the crime aggravated by the circumstance of reiteration; previous escape from legal confinement, evasion of sentence or violation of the conditions of his bail without a valid justification; commission of the offense while under probation, parole or conditional pardon; circumstances indicating the probability of flight if released on bail; undue risk of committing another crime during the pendency of the appeal; or other similar circumstances) not present. The second scenario contemplates the existence of at least one of the said circumstances.

The implications of this distinction are discussed with erudition and clarity in the commentary of retired Supreme Court Justice Florenz D. Regalado, an authority in remedial law:

Under the present revised Rule 114, the availability of bail to an accused may be summarized in the following rules: