498 Phil. 410

SECOND DIVISION

[A.M. NO. RTJ-03-1817, June 08, 2005]

P/SR. SUPT. ORLANDO M. MABUTAS, REGIONAL DIRECTOR, PHILIPPINE DRUG ENFORCEMENT AGENCY, METRO MANILA REGIONAL OFFICE, COMPLAINANT, VS. JUDGE NORMA C. PERELLO, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 276, MUNTINLUPA CITY, RESPONDENT.

[A.M. NO. RTJ-04-1820]

CITY PROSECUTOR EDWARD M. TOGONONON, COMPLAINANT, VS. JUDGE NORMA C. PERELLO, RESPONDENT.

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

Subject matters of the present administrative cases are two complaints against respondent Judge Norma C. Perello, Presiding Judge of the Regional Trial Court (Branch 276) of Muntinlupa City.

Admin. Matter No. RTJ-03-1817

This case originated from a letter of Police Senior Supt. Orlando M. Mabutas, Regional Director of the Philippine Drug Enforcement Agency, Metro Manila Regional Office. P/Sr. Supt. Mabutas complained of certain irregularities committed by respondent Judge in the grant of bail to accused Aiza Chona Omadan in Criminal Case No. 03-265. Omadan was charged in an Information, dated April 21, 2003, with Violation of Section 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, for the possession, custody and control of 57.78 grams of Methamphetamine Hydrochloride (*shabu*), with no bail recommended.

P/Sr. Supt. Mabutas's complaint was based on the memorandum submitted by Police Inspector Darwin S. Butuyan, who stated in his report, as follows:

In the evening of May 5, 2003, a colleague notified him of a scheduled preliminary investigation of Omadan's case on the following day (May 6). When P/Insp. Butuyan, together with PO2 Saturnino Mayonte and PO2 Allan Lising, went to the Office of the City Prosecutor, Assistant City Prosecutor (ACP) Florante E. Tuy merely asked them to sign the minutes of the preliminary investigation. Omadan and her counsel were not around, and the police officers were not furnished with a copy of Omadan's counter-affidavit.

On May 8, 2003, someone handed P/Insp. Butuyan a subpoena for the arraignment of Omadan on May 9, 2003. During the scheduled arraignment, they were surprised when ACP Vicente Francisco called PO2 Mayonte to the witness stand. Apparently,

Omadan filed a petition for bail and it was being heard on the same day. PO2 Mayonte and PO2 Lising asked ACP Francisco for a rescheduling of the hearing because they were not prepared to testify but the former declined, saying that it is just a motion for bail. After PO2 Mayonte testified, PO2 Lising asked ACP Francisco to present him as witness but again, the former declined since his testimony would only be corroborative. ACP Francisco also presented two (2) *barangay tanods.*

On May 12, 2003, P/Insp. Butuyan went to deliver a communiqué to ACP Francisco from P/Sr. Supt. Mabutas requesting that in the event bail was granted, its implementation be held in abeyance so that the police authorities may file the necessary motion, and in order to prevent Omadan from escaping. Since ACP Francisco was not around, they went to Branch 276 to secure a copy of the motion for bail. However, the police officers were "shocked" to learn that Omadan has already been released on a P1,000,000.00 bail on May 9, 2003, which was a Friday. Court personnel also informed them that they spent overtime work for the processing of the release papers. They asked for a copy of the transcript of stenographic notes of the hearing held on May 9, 2003, but it was not available.

Respondent Judge's Order dated May 9, 2003, granting Omadan's petition for bail, reads in part:

> Clearly, the evidence of guilt is not very strong for the denial of the bail. It was not proven that the object that SPO1 Mayonte allegedly saw wrapped in a tissue paper was indeed methamphetamine hydrochloride. He is not very sure if the specimen was in fact subjected to an analysis to determine what it was. There is also no specifying the quantity of the item.
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> There also seem to be an irregularity in the service of the search warrant for it was NOT witnessed by two disinterested persons. Admittedly two Barangay Tanods were brought to the residence of accused, but they never witnessed the search because when they arrived the search had already been completed. The wife of the owner of the residence was allegedly found in the house but she was not made to go with the searching team to witness the search. An evaluation of the record of the search, it appears also the search warrant, showed some material defect, because no witness who appeared to have personal knowledge of the illegal activities of the accused and husband, executed an Affidavit before the officer who issued the search warrant. In fact the searching questions were conducted on the applicant but not on the confidential informant, who alone had the personal knowledge of the alleged illegal activities in the vicinity. No deposition was taken of the applicant. Only the applying officers executed an affidavit, yet had no personal knowledge of the crime as they were only told by his confidential informant. No copy of the deposition is attached to the application. Although this court has no jurisdiction to hear the MOTION TO QUASH the search warrant however this fact are [sic] taken into consideration for the petition to bail if only to show the strength or weakness of the prosecution evidence, to ascertain if Prosecution have [sic] a witness who has personal knowledge of the alleged illegal activities of the accused in her home. There is none. Even the Barangay policemen Arturo Villarin, cannot tell with certainty if drugs were indeed found in the residence of

the accused.

Bail is therefore allowed in the sum of ONE MILLION PESOS (Php 1,000,000.00) which accused AIZA CHONA OMADAN may post in cash, by property or thru a reputable bonding company, and under the additional condition that her counsel, Atty. GENE CASTILLO QUILAS guarantees her appearance in court whenever so required.

It is SO ORDERED.[1]

Admin. Matter No. RTJ-04-1820

This case proceeded from a letter of Prosecutor Edward M. Togononon of Muntinlupa City, accusing respondent Judge of partiality, serious misconduct in office and gross ignorance of the law, concerning the latter's grant of bail in four criminal cases for Violations of R.A. No. 9165 pending before her.

In *Criminal Case No. 03-065*, entitled, *People of the Philippines vs. Rosemarie Pascual y Mozo @ Rosema,* for Violation of Section 5 of R.A. No. 9165, accused Pascual was charged with selling, trading, delivering and giving away to another 0.20 grams of Methamphetamine Hydrochloride (*shabu*), with no bail recommended.[2] Pascual filed, on February 5, 2003, a motion for bail on the grounds that the quantity of *shabu* involved is minimal and the imposable penalty is likewise minimal in degree; and that she is nine months pregnant and due to give birth anytime.[3]

On the day of arraignment, February 7, 2003, respondent Judge issued an order granting Pascualï¿½s motion for bail without hearing, which reads:

The MOTION FOR BAIL filed by Accused through counsel is granted on the reason cited thereat.

Accordingly, Accused ROSEMARIE PASCUAL Y MOZO may post her bail in the amount of P200,000.00 in cash or thru a reputable bonding company, or by property bond for her provisional liberty.

It is SO ORDERED.[4]

ACP Francisco filed a motion for reconsideration, arguing that since the crime charged against Pascual is a capital offense, bail is not allowed as a matter of right, and a hearing is indispensable. Respondent Judge denied the motion in her Order dated March 12, 2003, which reads, in part:

. . .

This Court is immediately appalled and shocked by the thirst for blood of these officials, were selling shabu in the quantity of "0.20 gram", they would put the accused to DEATH. It seems that, to these officials LIFE IMPRISONMENT and DEATH is the only solution to this problem, without considering the intended provision of the law, and the possible dislocation that the death of the accused will cause to his family and even to society itself. The prosecution and some City Officials have distorted the provision of the law by considering shabu as a "dangerous drug," in the

category of "opium puppy" (sic) or morphine. They cannot be more wrong!

In the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, Methamphetamine Hydrochloride is NEVER considered as "dangerous drugs" to come under the provision of the first paragraph of Sec. 5, Republic Act No. 9165. The definition of dangerous drugs under Sec. 3, letter J of the said law, specifies those considered as dangerous drugs. Instead Methamphetamine Hydrochloride is considered as a "controlled precursor" or "essential chemical", which is found and listed in No. 7, LIST OF SUBSTANCES in SCHEDULE NO. 111 of the 1971 United Nations Single Convention on Psychotropic Substances. Therefore, Methamphetamine Hydrochloride is a "chemical substance" or psychotropic substance and NOT a "dangerous drug."!

Since the quantity is very much less than a gram of this essential chemical, is punishable with imprisonment of only 12 years, as paragraph 2 of Sec. 5, R.A. 9165 provides. There is no law, statute, or jurisprudence that classifies 12 years imprisonment as a capital punishment, and non-bailable. Only bloodsuckers who thirst for blood will consider death for these offenders for this kind of offense!

Prosecution will probably argue that this drug is considered "dangerous" under Sec. 11, R.A. 9165, but this section does not define what are dangerous drugs, and the term is used generally to encompass all drugs. Still, this section only shows that for possession of certain quantities of "shabu", is punishable with 12 years imprisonment only, NEVER DEATH!

This Court has no quarrel with the Prosecutors if the drugs accused is pushing or found in the custody of accused are of large volume, for then they would really deserve to DIE! Then be richer by several millions, and foster a society of drug abusers yet! But this Court cannot agree with Prosecutors when the quantity that is peddled is not even enough to put body and soul together of accused. Foisting death on these kind of offenders, is death itself to him who imposes such a penalty! This court cannot be that unjust and unfeeling, specially as the law itself does not so allow!

The prosecutors are also reminded that the grant of bail to all offenses is constitutionally guaranteed. Even those punishable with death or capital offenses, only the EXCEPTIONS! It is never the rule.

. . .

Perhaps if these questioning individuals will provide employment to their constituents, the latter will not engage in this kind of trade to survive.[5]

In *Criminal Case No. 03-082*, entitled, *People of the Philippines vs. Rolando Uy y Manata @ Nono*, for Violation of Section 5, paragraph 1 of R.A. No. 9165, accused Uy was charged with selling, trading, delivering and giving away to Philippine National Police (PNP) operatives after a buy-bust operation 0.12 grams of Methamphetamine Hydrochloride (*shabu*). ACP Romeo B. Senson recommended no

bail. Uy filed a petition for bail cum motion to suppress prosecution evidence on February 18, 2003, alleging, among others, that the arrest was illegal as no buy-bust operation happened, and the shabu confiscated was planted on him. Without hearing, respondent Judge granted Uy's petition for bail since the quantity of drug allegedly "pushed" is only 0.12 grams[6] Uy was released on a P200,000.00 bail. The motion for reconsideration filed by ACP Francisco remains unresolved.

The antecedents of Criminal Case No. 03-265 entitled *People of the Philippines vs. Aiza Chona Omadan y Chua and John Doe*, for Violation of Section 11 of R.A. No. 9165, are set forth and dealt with in **Admin. Matter No. RTJ-03-1817.**

In Criminal Case No. 03-288 entitled P*eople of the Philippines vs. Mary Jane Regencia y Mozo @ Grace,* for Violation of Section 5 of R.A. No. 9165, accused Regencia was charged with selling, delivering, trading and giving away to another 0.07 grams of Methamphetamine Hydrochloride (*shabu*). Respondent Judge likewise granted Regencia's motion for bail without hearing, on the ground that the quantity of shabu involved is minimal and the imposable penalty is also minimal.[7]

Respondent Judge was required to comment on these two complaints.

In **Admin. Matter No. RTJ-03-1817,** respondent Judge contends that P/Sr. Supt. Mabutas's charges against her are baseless; that the preliminary investigation conducted on Omadan's case was outside her jurisdiction; that she did not have any hand or influence in ACP Francisco's handling of the hearing on the petition for bail as it is within the latter's control and supervision; that she denies that there was undue haste in the grant of bail in Omadan's favor; and that bail was granted because the prosecution's evidence of Omadan's guilt was not strong.[8]

In **Admin. Matter No. RTJ-04-1820,** respondent Judge explains that she did not conduct any hearings on the motions/petitions for bail filed in the criminal cases subject of the complaint because the crimes charged are not capital offenses as the quantity of *shabu* involved therein was minimal. Criminal Case Nos. 03-065, 03-082, and 03-288 all involve selling of less than 5 grams of *shabu*. Respondent Judge believes that under R.A. No. 9165, *shabu* is not a dangerous drug but merely a controlled precursor, in which the selling of less than 5 grams is punishable only with imprisonment of 12 years to 20 years. Such being the case, respondent Judge maintains that bail is a matter of right and a hearing is not required.[9]

The two complaints were consolidated and referred to Court of Appeals Associate Justice Jose C. Reyes, Jr. for investigation, report, and recommendation.

After due proceedings, the Investigating Justice submitted his Report and Recommendation, with the following findings and conclusion:

> The charges arose out of the same set of facts and are interrelated and will be discussed together.
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> Before proceeding further, the investigating justice will first dispose respondent judge's assertion that the complaints should be dismissed outright claiming that where sufficient judicial remedy exists, the filing of administrative complaint is not the proper remedy to correct actions of a