

THIRD DIVISION

**[A.M. OCA No. 03-1800-RTJ (formerly OCA IPI
No. 03-1675-RTJ), November 26, 2004]**

**CHIEF STATE PROSECUTOR JOVENCITO R. ZUÑO, COMPLAINANT,
VS. JUDGE ALEJADRINO C. CABEBE, REGIONAL TRIAL COURT,
BRANCH 18, BATAAC, ILOCOS NORTE, RESPONDENT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

The instant administrative case stemmed from the sworn complaint^[1] dated January 15, 2003 of Chief State Prosecutor Jovencito R. Zuño of the Department of Justice, against Judge Alejandrino C. Cabebe,^[2] then Presiding Judge, Regional Trial Court, Branch 18, Bataac, Ilocos Norte. The charges are knowingly rendering an unjust judgment, gross ignorance of the law and partiality.

In his complaint, Chief State Prosecutor Zuño alleged that Criminal Case No. 3950-18 for illegal possession of prohibited or regulated drugs was filed with the Regional Trial Court, Branch 18, Bataac, Ilocos Norte against Rey Daquep Arcangel, Victorino Gamet Malabed, William Roxas Villanueva, all police officers, Jocelyn Malabed Manuel and Pelagio Valencia Manuel. Upon arraignment, all the accused, assisted by their counsel *de parte*, pleaded not guilty to the crime charged. On March 14, 2001, the prosecution filed with this Court a petition for change of venue but was denied in a Resolution dated August 13, 2001.^[3] On October 8, 2001, the accused filed a motion for reconsideration.^[4] In the meantime, the proceedings before respondent's court were suspended.

On May 6, 2002, the accused filed a motion to dismiss invoking as ground the right of the accused to a speedy trial. On November 5, 2002, respondent judge *motu proprio* issued an Order^[5] granting bail to the accused, fixing the bail for each at P70,000.00 in cash or property bond at P120,000.00, except for accused Evelyn Manuel whose bail was fixed at P20,000.00 in cash. Respondent judge issued the Order without the accused's application or motion for bail.

The prosecution then filed a motion for reconsideration.^[6] Instead of acting thereon, respondent judge issued an order inhibiting himself from further proceeding with the case, realizing that what he did was patently irregular. Complainant thus prays that respondent judge be dismissed from the service with forfeiture of all benefits and be disbarred from the practice of law.

In his comment,^[7] respondent denied the charges. While admitting that he issued the Order dated November 5, 2002 granting bail to the accused without any hearing, "the same was premised on the constitutional right of the accused to a speedy trial." There was delay in the proceedings due to complainant's frequent

absences and failure of the witnesses for the prosecution to appear in court, resulting in the cancellation of the hearings. The prosecution did not object to the grant of bail to the accused.^[8] He added that the administrative complaint filed against him is purely harassment. It is not the appropriate remedy to question his alleged erroneous Order. Accordingly, and considering his forty (40) years of government service, he prays that the administrative complaint be dismissed.

On March 26, 2003, respondent judge compulsorily retired.

In his Report dated July 7, 2003, Deputy Court Administrator Jose P. Perez found respondent judge liable for gross ignorance of the law and recommended that a fine of P20,000.00 be imposed upon him, with a stern warning that a repetition of the same or similar offense will be dealt with more severely.

In our Resolution^[9] dated August 25, 2003, we directed that the complaint be re-docketed as a regular administrative matter and required the parties to manifest whether they are submitting the case for resolution on the basis of the pleadings filed. Both parties submitted the required manifestations that they are submitting the case for decision on the basis of the records.

In *Docena-Caspe vs. Judge Arnulfo O. Bugtas*,^[10] we held that jurisprudence is replete with decisions on the procedural necessity of a hearing, whether summary or otherwise, relative to the grant of bail, especially in cases involving offenses punishable by death, *reclusion perpetua*, or life imprisonment, where bail is a matter of discretion. Under the present Rules, a hearing is mandatory in granting bail whether it is a matter of right or discretion.^[11] It must be stressed that the grant or the denial of bail in cases where bail is a matter of discretion, hinges on the issue of whether or not the evidence of guilt of the accused is strong, and the determination of whether or not the evidence is strong is a matter of judicial discretion which remains with the judge. In order for the latter to properly exercise his discretion, he must first conduct a hearing to determine whether the evidence of guilt is strong.^[12] In fact, even in cases where there is no petition for bail, a hearing should still be held.^[13]

There is no question that respondent judge granted bail to the accused without conducting a hearing, in violation of Sections 8 and 18, Rule 114 of the Revised Rules of Criminal Procedure, quoted as follows:

“Sec. 8. *Burden of proof in bail application.* – At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, *reclusion perpetua*, or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify.”

“Sec. 18. *Notice of application to prosecutor.* – In the application for bail under section 8 of this Rule, the court must give reasonable notice of the

hearing to the prosecutor or require him to submit his recommendation.
(18a)”

In *Cortes vs. Catral*,^[14] we laid down the following rules outlining the duties of the judge in case an application for bail is filed:

1. In *all* cases whether bail is a matter of right or discretion, *notify the prosecutor* of the hearing of the application for bail or require him to submit his recommendation (Section 18, Rule 114 of the Revised Rules of Criminal Procedure);
2. Where bail is a matter of discretion, *conduct a hearing* of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion (Section 7 and 8, *id.*);
3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;
4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond (Section 19, *id.*); otherwise the petition should be denied.

Based on the above-cited procedure, after the hearing, the court’s order granting or refusing bail must contain a summary of the evidence of the prosecution and based thereon, the judge should formulate his own conclusion as to whether the evidence so presented is strong enough to indicate the guilt of the accused.^[15]

Respondent judge did not follow the above Rules and procedure enumerated in *Cortes*.^[16] He did not conduct a hearing before he granted bail to the accused, thus depriving the prosecution of an opportunity to interpose objections to the grant of bail. Irrespective of his opinion on the strength or weakness of evidence to prove the guilt of the accused, he should have conducted a hearing and thereafter made a summary of the evidence of the prosecution. The importance of a bail hearing and a summary of evidence cannot be downplayed, these are considered aspects of procedural due process for both the prosecution and the defense; its absence will invalidate the grant or denial of bail.^[17]

Neither did respondent require the prosecution to submit its recommendation on whether or not bail should be granted.

He maintains that the prosecution did not object to the grant of bail to the accused, hence, he cannot be held administratively liable for not conducting a hearing.

In *Santos vs. Ofilada*,^[18] we held that the failure to raise or the absence of an objection on the part of the prosecution in an application for bail does not dispense with the requirement of a bail hearing. Thus –

“Even the alleged failure of the prosecution to interpose an objection to the granting of bail to the accused will not justify such grant without hearing. This Court has uniformly ruled that even if the prosecution