

[A. M. No. MTJ-04-1529 [Formerly OCA IPI No. 03-1406-MTJ], December 16, 2004]

PROS. EDILBERTO L. JAMORA, COMPLAINANT, VS. JUDGE JOSE A. BERSALES, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2, GENERAL SANTOS CITY, RESPONDENT.

R E S O L U T I O N

GARCIA, J.:

The instant administrative case stemmed from a verified complaint dated April 24, 2003 filed with the Office of the Court Administrator (OCA) by Prosecutor Edilberto L. Jamora, against Presiding Judge Jose A. Bersales of the Municipal Trial Court in Cities (MTCC) of General Santos City, Branch 2, charging the latter with gross ignorance of the law in connection with his grant of bail to all the accused in Criminal Cases Nos. 44231-2 and 44232-2. entitled *People vs. Alimora M. Akmad, et al.*

Complainant Jamora, assigned as the trial prosecutor of the Regional Trial Court (RTC) of General Santos City, Branch 37 alleged that on August 8, 2002, Criminal Cases Nos. 44231-2 (for violation of Sec. 11,^[1] Art. II of RA 9165) and 44232-2 (for violation of Sec. 5^[2] in relation to Sec. 26^[3] of Art. II of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002) were filed against spouses Alimora M. Akmad and Reynalda L. Akmad. Alimora's brother, Abra M. Akmad was co-accused in the second case. Respondent Judge Bersales of the MTCC of General Santos City conducted the preliminary investigation based on the criminal complaints.^[4]

After conducting the preliminary investigation, respondent judge issued an order dated August 13, 2002, finding the existence of a probable cause against all the detained accused. He also recommended bail of P120,000 for each accused in the same order.^[5] On that very same day, accused filed a motion for reduction of bail which respondent judge, without notice and hearing, granted on August 15, 2002.^[6]

On August 22, 2002, respondent judge issued an order in connection with Criminal Case No. 44232-2, finding that a violation of Sec. 11, Art. II of RA 9165 may have been committed and not Sec. 5, Art. II of RA 9165. The dispositive portion reads:

Evaluating the evidence of the complaint, the investigating judge finds that the offense of violation of Sec. 11, Art. II of RA 9165 otherwise known as Comprehensive Dangerous Drugs Act of 2002 may have been committed and the accused may be held for trial in the Regional Trial Court.

The transmittal of the records of the said cases to the Office of the City Prosecution of General Santos City for review and further evaluation was likewise ordered.^[7]

Upon review of the respondent judge's report, Reviewing Prosecutor Ramon C. Alano issued an order (and approved by 1st Assistant City Prosecutor Andres N. Lorenzo, Jr.) affirming respondent judge's findings on the existence of probable cause but took exception to the bail granted. Prosecutor Alano pronounced that in Criminal Case No. 44232-2, bail should not have been granted to the accused considering that the crime charged is a non-bailable offense, the imposable penalty being, *life imprisonment to death and a fine of P500,000 to P10,000,000*. Likewise, in Criminal Case No. 44231-2, the bail set should have been P200,000, as the imposable penalty is *twelve years and one day to twenty years and a fine ranging from P300,000 to P400,000*.^[8]

On September 3, 2002, an information for violation of Section 5 in relation to Section 26 of Article II of RA No. 9165 (for Criminal Case No. 44232-2) was filed before the RTC of General Santos City and docketed as RTC Criminal Case No. 16334 which was raffled to Branch 35 presided by Judge Eddie R. Rojas.

On September 24, 2002, bondsman Hadji Sarip Akmad filed a motion to substitute cash bond to property bond.^[9] Finding the motion to be without merit and considering that the crime charged (under Crim. Case No. 44232-2) is a non-bailable offense, Judge Rojas ordered the cancellation and forfeiture of the cash bond in favor of the government. A warrant of arrest was issued against all the accused.^[10]

Complainant then filed this complaint charging respondent judge with ignorance of the law in reducing/changing the crime charged from violation of Sec. 5 of RA 9165 to violation of Sec. 11 of RA 9165 to justify the grant of bail. Likewise, no hearing was conducted before the grant of bail, thus denying the prosecution an opportunity to be heard on the question of bail.

In his comment dated July 15, 2003,^[11] respondent vehemently denied the accusation that he is ignorant of the law and that the present administrative complaint was merely an offshoot of a contempt order he issued against complainant.

He stated that upon receipt of the two criminal cases, he lost no time in conducting the preliminary investigation of the complaints to find the existence of a probable cause. In Criminal Case No. 44231-1, accused were charged of having in their possession and control one heat sealed transparent plastic sachet of white crystalline substance believed to be "shabu" weighing more or less .03 grams, one plastic tooter with suspected "shabu" residue, one strip aluminum foil with suspected "shabu" residues and one disposable lighter confiscated at the leather pouch located at the back of the driver's seat. In Criminal Case No. 44232-2, accused were charged of delivery of one heat sealed transparent plastic sachet of white crystalline substance believe to be "shabu," weighing more of less 2 grams to be sold for P5,000 to a Narcotic Agents who acted as poseur-buyer.^[12]

He maintained that after scrutiny of the complaint, he found the evidence against all the accused weak and not strong because it was based merely on the police officers' belief that the items are "shabu". While he was informed that one of the cases is a non-bailable offense, however, mindful of the constitutional guarantee on the right of the accused when the evidence of guilt is not strong and the elementary principle

that it is better to free a guilty man than to imprison an innocent one, he granted bail to the three accused after availing of his judicial discretion.

As to the charge that the Office of the City Prosecutor was not given the opportunity to be heard on the motion to reduce bail, respondent declared that due notice was given to the said office as evidenced by the marginal notation on the motion by Assistant City Prosecutor Jose Jerry Fulgar, thus:

For violation of Sec. 11, RA 9165 the prosecution submits to the sound discretion of the Honorable Court.

For violation of Sec. [5] RA 9165, No bail is recommended. Hence, no motion for reduction can be entertained.

Respondent likewise declared that an administrative complaint is not the appropriate remedy for every irregular or erroneous order or decision issued by a judge. If the complainant is not conformable with his order, he should have brought the issue to the appellate court. Thus, he prays for the dismissal of the complaint.

Based on its evaluation, the OCA recommended that the instant case be re-docketed as a regular administrative matter and that respondent judge be suspended from office for a period of three months without pay, with a stern warning that a similar infraction in the future will be dealt with a more severe penalty.

In a Resolution dated February 16, 2004, the Court required the parties to manifest whether or not they are submitting the case on the basis of the pleadings filed. In separate Manifestations, both dated March 17, 2004, complainant and respondent judge manifested their conformity to the said Resolution.

We agree with the findings of the OCA, except as to the recommended penalty.

It is imperative that as an advocate of justice and a visible representation of the law, a judge is expected to keep abreast with and be proficient in the interpretation of our laws. He should be acquainted with legal norms and precepts as well as with statutes and procedural rules. He must have the basic rules at the palm of his hands as he is expected to maintain professional competence at all times.[13] Having accepted the exalted position of a judge, respondent judge owes the public and the court he sits in proficiency in the law. Respondent judge failed to live up to these standards. Not only did he change or reduce the crime charged so as to justify his grant, but more so, he granted bail to all the accused without conducting any hearing, thus, denying the prosecution the opportunity to present its side.

Rule 112, Section 1 of the Rules of Court defines a preliminary investigation as an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. For practical considerations and also as dictated by necessity considering the lack of prosecutors in the provinces, judges of the Municipal Trial Courts and Municipal Circuit Trial Courts have been authorized to conduct preliminary investigations.[14] When a preliminary investigation is conducted by a municipal trial court judge, he is obligated, upon conclusion of the preliminary investigation, to transmit to the provincial or city fiscal, for appropriate action, the resolution of the case which must contain a brief statement of findings of

fact and of the law supporting his action, together with the entire records of the case.^[15]

In the present case, immediately after his determination of a probable cause, but before the termination of the preliminary investigation, respondent judge granted the accused bail in the amount of P120,000 each, later reducing this to P60,000 over the objection of the prosecution. This pronouncement was stated not in a resolution, but in a separate order declaring the finding on the existence of a probable cause and without any summary of his findings of fact and law supporting his action. The court's grant or refusal of bail must contain a summary of the evidence of the prosecution on the basis of which should be formulated the judge's own conclusion on whether such evidence is strong enough to indicate the guilt of the accused. The summary thereof is considered an aspect of procedural due process for both the prosecution and the defense; its absence will invalidate the grant or the denial of the application for bail.^[16] Nowhere is such summary to be found in the order of respondent judge.

While respondent judge alleged that a hearing was conducted, he failed to submit any evidence in support thereof. He alleged that the prosecution was duly notified as evidenced by Prosecutor Jose Jerry Fulgar's marginal notation on the copy of the motion for reduction of bail. However, said marginal notation stated that for violation of Sec. 11 of RA 9165, the prosecution submits to the sound discretion of the court and in the other case, he recommended no bail and that the motion for reduction of bail should not be entertained.

The crime for violation of Sec. 5 of RA 9165 carries a penalty of life imprisonment to death. Rule 114, Sec. 7 of the Rules of Court states:

No person charged with the capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when the evidence of guilt is strong, regardless of the stage of the criminal prosecution".

This provision is based on Section 13, Article III of the 1987 Constitution which reads:

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.

The constitutional mandate makes the grant or denial of bail in capital offense hinge on the issue of whether or not the evidence of guilt of the accused is strong. The determination of whether or not the evidence is strong is a matter of judicial discretion that remains with the judge. Stressing in *Basco v. Rapatalo*^[17] that the judge had the duty to determine whether the evidence of guilt was strong, the Court held:

When the grant of bail is discretionary, the prosecution has the burden of showing that the evidence of guilt against the accused is strong. However, the determination of whether or not the evidence of guilt is