

FIRST DIVISION

[A.M. No. RTJ-01-1633, June 19, 2001]

**SPOUSES ANTONIO AND ELSA FORTUNA, COMPLAINANTS, VS.
JUDGE MA. NIMFA PENACO-SITACA AND ROY P. MURALLON,
BRANCH CLERK OF COURT, RTC, BRANCH 35, OZAMIS CITY,
RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

On September 27, 1999, the Office of the Chief Justice received a letter-complaint from the Spouses Antonio and Elsa Fortuna, charging Judge Nimfa Penaco-Sitaca and Branch Clerk of Court Rey P. Murallon of alleged partiality, abuse of discretion and negligence in connection with Criminal Case No. RTC-1503 entitled, "*People of the Philippines v. Dunhill Palomares*," for Murder.

The letter-complaint was referred to the Office of the Court Administrator (OCA) for evaluation, report and recommendation. The OCA directed both respondents to file their respective comments on the letter complaint.

Respondent Branch Clerk filed his Comment on November 25, 1999; while respondent Judge filed her own Comment on December 3, 1999.

On the basis of the OCA report and recommendation, the Court subsequently issued a Resolution dated February 16, 2000 requiring the parties to manifest if they are willing to submit the case for resolution on the basis of the pleadings filed. The Court further resolved to direct: 1.] respondent Judge to investigate and to file appropriate charges against Atty. Diego Palomares, Jr. if the bail bond filed before her is indeed falsified taking into account the letter of Atty. Glen Peter C. Baldado, former Clerk of Court, Regional Trial Court of Cagayan de Oro City, Branch 18; 2.] Executive Judge Noli Catli of the Regional Trial Court of Cagayan de Oro City to conduct his own investigation on the matter considering that the bail bond, particularly the order of release, appears to have been issued by Branch 18 of said court; and 3.] both respondent Judge Sitaca and Judge Catli to submit their reports to the Court through the OCA within thirty (30) days from notice.

Thereafter, respondents Judge and Branch Clerk submitted their manifestations dated March 9, 2000 and March 7, 2000, respectively, stating their willingness to submit the case for decision on the basis of the pleadings already filed. The said manifestations were noted by the Court in a Resolution dated June 19, 2000.

Complainants claim that the criminal case for the gruesome murder of their son was filed before the Regional Trial Court, Branch 35, Ozamis City presided by Acting Judge Nimfa Penaco-Sitaca and was submitted for decision on September 18, 1997. After two (2) years, the case remained undecided because Judge Sitaca ordered the

suspension of the proceedings. Both respondents were likewise charged with abuse of discretion in accepting a fictitious bail bond filed by the father/counsel of the accused in the criminal case.

In her comment, respondent judge stated that she issued an order dated September 18, 1997 declaring the case submitted for decision. On October 10, 1997, she issued another order suspending the resolution of the case until the petition for certiorari filed by the accused with the Court of Appeals shall have been resolved. She stated that although she was aware of the rule that an injunction is necessary before such suspension, she and the prosecution agreed that the same would be a "becoming courtesy to the Court of Appeals since there would be no judgment that would later on be set aside." She further averred that after reviewing the case, she realized that it would be better if she allowed the defense to cross-examine the prosecution witness. She likewise admitted her error with regard to the fake bail bond stating that the approval thereof cannot be justified and that she was taking "absolute and sole responsibility for the blunder born of neglect."

In his comment, respondent Branch Clerk stated that the RTC of Ozamis City, Branch 25 received on September 6, 1997, through Atty. Diego M. Palomares, Jr., lawyer/father of the accused in Criminal Case No. RTC-1503, a photocopy of the bail bond, which was notarized by the Branch Clerk of Court of the RTC of Cagayan de Oro City, Branch 18, approved by Vice-Executive Judge Nazar U. Chavez on September 3, 1997 and registered with the Office of the Registry of Deeds. The bail bond was accompanied by the original copy of the Order of Release dated September 2, 1997, duly signed by the Branch Clerk of Court, Atty. Glen Peter C. Baldado. Upon receipt thereof, respondent Branch Clerk immediately conferred with Judge Sitaca in the presence of Stenographer Emelda E. Ruiz and thereafter, upon instructions of Judge Sitaca, he issued an Order of Discharge from Custody dated September 6, 1997.

Respondent Branch Clerk further stated that since Atty. Baldado did not send the original copy of the bail bond, he religiously followed it up with three (3) letters dated May 28, 1998, August 31, 1998 and December 11, 1998, all of which were unanswered. It was only on January 22, 1999 that he received a letter dated January 14, 1999 from Atty. Baldado stating that he resigned effective May 16, 1998 and that as per court records, no such bail bond existed, much less was it approved by Judge Chavez. Neither was an Order of Release ever issued.

In view of respondent Judge's admission of the charges against her, the formal investigation on the matter was dispensed with.

The issue raised in this case is not novel. Complaints involving irregular approval of bail bonds and the issuance of orders of release appear to be a common offense of judges. In **Go v. Bongolan**,^[1] citing the earlier case of **Adapon v. Domagtay**,^[2] it was held:

This is not the first time that a complaint is brought before this Court involving the irregular approval of bail bond and issuance of order of release. The Court again reminds judges of lower courts of their role as the embodiment of competence, integrity and independence. This Court believes that in order to achieve justice, **judges should, in all cases,**

diligently ascertain and conscientiously apply the law in relation to the facts of each case they hear and decide, unswayed by partisan interests, public opinion or fear of criticism. This is the least that judges can do to sustain the trust reposed on them by the public. (Emphasis provided)

Such degree of diligence and conscientiousness is clearly wanting in this case much more so considering the offense charged is punishable by capital punishment. In ***Cruz v. Yaneza***,^[3] the Court stressed that -

. . . Utmost diligence is required of trial judges in granting bail, especially in cases where bail is not a matter of right. Certain procedures must be followed in order to be assured that accused would be present during trial. As a responsible judge respondent must not be swayed by the mere representations of the parties; instead, he should look into the real and hard facts of the case. He must be impartial not only in appearance but also in fact. (Emphasis provided)

Concededly, it is true that in receiving evidence on bail, a court is neither required to try the merits of the case nor is it called to speculate on the outcome of the trial^[4] and the determination of whether or not the evidence of guilt of the accused is strong, being a matter of judicial discretion, remains with the judge.^[5] However, we have held that admission to bail as a matter of discretion presupposes the *exercise thereof in accordance with law and guided by the applicable legal principles*. The prosecution must first be accorded an opportunity to present evidence because by the very nature of deciding applications for bail, *it is on the basis of such evidence that judicial discretion is weighed against in determining whether the guilt of the accused is strong*. In other words, discretion must be exercised regularly, legally and within the confines of procedural due process, that is, after the evaluation of the evidence submitted by the prosecution. Any order issued in the absence thereof is not a product of sound judicial discretion but of whim and caprice and outright arbitrariness.^[6]

The case of ***Narciso v. Sta. Romana-Cruz***,^[7] citing the landmark case of ***Basco v. Rapatalo***,^[8] expounded on what this judicial discretion consists of, thus:

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 strong, being a matter of judicial discretion remains with the judge. This discretion, by the very nature of things, may rightly be exercised only after evidence is submitted to the court at the hearing. ***Since the discretion is directed to the weight of the evidence and since evidence cannot properly be weighed if not duly exhibited or produced before the court, it is obvious that a proper exercise of judicial discretion requires that the evidence of guilt be submitted to the court,*** the petitioner having the right of cross-examination and to