

## THIRD DIVISION

[ G.R. No. 141529, June 06, 2001 ]

**FRANCISCO YAP, JR., A.K.A. EDWIN YAP, PETITIONER, VS.  
COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES,  
RESPONDENTS.**

### D E C I S I O N

**GONZAGA-REYES, J.:**

The right against excessive bail, and the liberty of abode and travel, are being invoked to set aside two resolutions of the Court of Appeals which fixed bail at P5,500,000.00 and imposed conditions on change of residence and travel abroad.

For misappropriating amounts equivalent to P5,500,000.00, petitioner was convicted of estafa by the Regional Trial Court of Pasig City<sup>[1]</sup> and was sentenced to four years and two months of *prision correccional*, as minimum, to eight years of *prision mayor* as maximum, "in addition to one (1) year for each additional P10,000.00 in excess of P22,000.00 but in no case shall it exceed twenty (20) years."<sup>[2]</sup> He filed a notice of appeal, and moved to be allowed provisional liberty under the cash bond he had filed earlier in the proceedings. The motion was denied by the trial court in an order dated February 17, 1999.

After the records of the case were transmitted to the Court of Appeals, petitioner filed with the said court a Motion to Fix Bail For the Provisional Liberty of Accused-Appellant Pending Appeal, invoking the last paragraph of Section 5, Rule 114 of the 1997 Revised Rules of Court. Asked to comment on this motion, the Solicitor General opined that petitioner may be allowed to post bail in the amount of P5,500,000.00 and be required to secure "a certification/guaranty from the Mayor of the place of his residence that he is a resident of the area and that he will remain to be so until final judgment is rendered or in case he transfers residence, it must be with prior notice to the court and private complainant."<sup>[3]</sup> Petitioner filed a Reply, contending that the proposed bail of P5,500,000.00 was violative of his right against excessive bail.

The assailed resolution of the Court of Appeals<sup>[4]</sup>, issued on October 6, 1999, upheld the recommendation of the Solicitor General; thus, its dispositive portion reads:

WHEREFORE, premises considered, the "Motion to Fix Bail For Provisional Liberty of Accused-Appellant Pending Appeal" is hereby GRANTED. Accused-appellant Francisco Yap, Jr., a.k.a. Edwin Yap is hereby ALLOWED TO POST BAIL in the amount of Five Million Five Hundred Thousand (P5,500,000.00) Pesos, subject to the following conditions,

viz.:

- (1) He (accused-appellant) secures a certification/guaranty from the Mayor of the place of his residence that he is a resident of the area and that he will remain to be a resident therein until final judgment is rendered or in case he transfers residence, it must be with prior notice to the court;
- (2) The Commission of Immigration and Deportation (CID) is hereby directed to issue a hold departure order against accused-appellant; and
- (3) The accused-appellant shall forthwith surrender his passport to the Division Clerk of Court for safekeeping until the court orders its return;
- (4) Any violation of the aforesaid conditions shall cause the forfeiture of accused-appellant's bail bond, the dismissal of appeal and his immediate arrest and confinement in jail.

SO ORDERED.<sup>[5]</sup>

A motion for reconsideration was filed, seeking the reduction of the amount of bail fixed by respondent court, but was denied in a resolution issued on November 25, 1999. Hence, this petition.

Petitioner sets out the following assignments of error:

The respondent Court of Appeals committed grave abuse of discretion in fixing the bail for the provisional liberty of petitioner pending appeal in the amount of P5.5 million.

The respondent Court of Appeals committed grave abuse of discretion in basing the bail for the provisional liberty of the petitioner on his civil liability.

The respondent Court of Appeals unduly restricted petitioner's constitutional liberty of abode and travel in imposing the other conditions for the grant of bail.

Petitioner contends that the Court of Appeals, by setting bail at a prohibitory amount, effectively denied him his right to bail. He challenges the legal basis of respondent court for fixing bail at P5,500,000.00, which is equivalent to the amount of his civil liability to private complainant Manila Mahogany Marketing Corporation, and argues that the Rules of Court never intended for the civil liability of the accused to be a guideline or basis for determining the amount of bail. He prays that bail be reduced to at least P40,000.00, citing the maximum amount of bail that can be posted for the crime of estafa under the 1996 Bail Bond Guide, or P20,000.00, equivalent to the amount of bail he posted during the trial of the case.<sup>[6]</sup>

On the other hand, the Solicitor General maintains that no grave abuse of discretion could be ascribed to the Court of Appeals for fixing the amount of bail at

P5,500,000.00 considering the severity of the penalty imposed, the weight of the evidence against petitioner, and the gravity of the offense of which petitioner was convicted by the RTC. He asserted that the P5,500,000.00 not only corresponded to civil liability but also to the amount of fraud imputed to petitioner. The Solicitor General further pointed out the probability of flight in case petitioner is released on bail, it having been established that petitioner was in possession of a valid passport and visa and had in fact left the country several times during the course of the proceedings in the lower court. It was also shown that petitioner used different names in his business transactions and had several abodes in different parts of the country.

As for the conditions imposed by the bail bond, the Solicitor General advanced that all that the Court of Appeals requires is notice in case of change of address; it does not in any way impair petitioner's right to change abode for as long as the court is apprised of his change of residence during the pendency of the appeal.

Petitioner's case falls within the provisions of Section 5, Rule 114 of the 1997 Rules of Court which states:

SEC. 5. *Bail, when discretionary.* --- Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, the court, on application, may admit the accused to bail.

The court, in its discretion, may allow the accused to continue on provisional liberty under the same bail bond during the period to appeal subject to the consent of the bondsman.

If the court imposed a penalty of imprisonment exceeding six (6) years, but not more than twenty (20) years, the accused shall be denied bail, or his bail previously granted shall be cancelled, upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

- (a) That the accused is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
- (b) That the accused is found to have previously escaped from legal confinement, evaded sentence, or has violated the conditions of his bail without valid justification;
- (c) That the accused committed the offense while on probation, parole, or under conditional pardon;
- (d) That the circumstances of the accused or his case indicate the probability of flight if released on bail; or
- (e) That there is undue risk that during the pendency of the appeal, the accused may commit another crime.

The appellate court may review the resolution of the Regional Trial Court, on motion and with notice to the adverse party.<sup>[7]</sup>

There is no question that in the present case the Court of Appeals exercised its discretion in favor of allowing bail to petitioner on appeal. Respondent court stated that it was doing so for "humanitarian reasons", and despite a perceived high risk of flight, as by petitioner's admission he went out of the country several times during the pendency of the case, for which reason the court deemed it necessary to peg the amount of bail at P5,500,000.00.

The prohibition against requiring excessive bail is enshrined in the Constitution.<sup>[8]</sup> The obvious rationale, as declared in the leading case of *De la Camara vs. Enage*,<sup>[9]</sup> is that imposing bail in an excessive amount could render meaningless the right to bail. Thus, in *Villaseñor vs. Abañó*,<sup>[10]</sup> this Court made the pronouncement that it will not hesitate to exercise its supervisory powers over lower courts should the latter, after holding the accused entitled to bail, effectively deny the same by imposing a prohibitory sum or exacting unreasonable conditions.

xxx There is grim irony in an accused being told that he has a right to bail but at the same time being required to post such an exorbitant sum. What aggravates the situation is that the lower court judge would apparently yield to the command of the fundamental law. In reality, such a sanctimonious avowal of respect for a mandate of the Constitution was on a purely verbal level. There is reason to believe that any person in the position of petitioner would under the circumstances be unable to resist thoughts of escaping from confinement, reduced as he must have been to a state of desperation. In the same breath as he was told he could be bailed out, the excessive amount required could only mean that provisional liberty would be beyond his reach. It would have been more forthright if he were informed categorically that such a right could not be availed of. There would have been no disappointment of expectations then. It does call to mind these words of Justice Jackson, "a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." xxx<sup>[11]</sup>

At the same time, Section 9, Rule 114 of the Revised Rules of Criminal Procedure advises courts to consider the following factors in the setting of the amount of bail:

- (a) Financial ability of the accused to give bail;
- (b) Nature and circumstances of the offense;
- (c) Penalty for the offense charged;
- (d) Character and reputation of the accused;
- (e) Age and health of the accused;
- (f) Weight of the evidence against the accused;
- (g) Probability of the accused appearing at the trial;
- (h) Forfeiture of other bail;
- (i) The fact that the accused was a fugitive from justice when