415 Phil. 598

THIRD DIVISION

[A.M. No. RTJ-00-1597 (formerly OCA IPI No. 00-1043-RTJ), August 20, 2001]

WILSON ANDRES, COMPLAINANT, VS. JUDGE ORLANDO D. BELTRAN, REGIONAL TRIAL COURT, TUGUEGARAO CITY, BRANCH 2, RESPONDENT.

D E C I S I O N

GONZAGA-REYES, J.:

Herein complainant Wilson Andres was charged with the crime of murder and the case was docketed as Criminal Case No. 7155 before the Regional Trial Court of Tuguegarao City, Branch 2. The trial court, then presided by Judge Abraham Principe, granted bail upon motion of the accused and ordered his release from detention. After presentation of evidence for the prosecution, accused Wilson Andres filed a "motion to dismiss by way of demurrer to evidence". Respondent Judge Orlando Beltran, in his capacity as Acting Presiding Judge of RTC-Tuguegarao, Branch 2 denied the motion in his Order of November 25, 1999. On November 29, 1999, the court issued a subpoena to accused Andres informing him that the criminal case is set for initial hearing for reception of evidence for the accused on January 31, 2000. Accused appeared at the scheduled hearing but his counsel was not present. Respondent Judge then issued an order cancelling the bail bond of accused Andres and ordered his detention in his Order dated January 31, 2000, to wit:

> "In view of the absence of Atty. Joseph Alcid and considering the fact that the presentation of defense evidence in this case had been delayed for almost one year from the time that the prosecution rested its case, the bailbond posted for the provisional liberty of the accused Wilson Andres is hereby cancelled and is ordered detained, specially since the accused is not entitled to bail as a matter of right as the offense charged is Murder."

Accused Andres was detained from January 31, 2000 until February 9, 2000[1] when an order for his release was issued after the trial court found that no subpoena or notice of hearing was sent to counsel of accused.[2]

Hence, the instant administrative case for conduct unbecoming of a judge, serious misconduct, inefficiency and gross ignorance of the law.

Herein complainant avers that the act of respondent Judge is clearly an abuse of authority as the grounds relied upon by him for cancellation of his bail bond are not provided for under the rules.

Complainant alleges that there was no notice to his counsel regarding the hearing for reception of evidence for the defense set on January 31, 2000 and hence, his counsel did not appear at the scheduled hearing. Complainant further alleges that at the said hearing, respondent Judge told him to secure the services of a new counsel immediately so he could hear the case and if accused could not secure one he (respondent judge) would order his incarceration. The case was called again and counsel for the accused was still not around. Respondent Judge then allegedly ordered the incarceration of the accused. Complainant argues that he did not violate any conditions of the bail and the fact that his counsel was not present during the scheduled hearing is not a ground for the cancellation of his bail bond.

In his Comment, respondent Judge contends that accused is not entitled to bail as a matter of right since he is charged with "a capital offense or at least one punishable by *reclusion perpetua*." He argues that he was not the one who granted accused bail during the earlier stage of the proceedings and respondent Judge was entitled to make his own assessment of the evidence, which was not available at the time bail was first granted, to determine whether evidence of guilt was strong on the basis of the evidence. Respondent Judge further contends that the order granting bail had specifically reserved to the court the right to recall the order granting bail if evidence of conspiracy would be strong, and that he was convinced that there was ground to recall the order granting bail as he took into consideration certain facts and circumstances such as: (1) the accused's co-accused has escaped and remained at large; (2) either accused or his counsel would absent themselves from the proceedings prompting cancellation of scheduled hearings without advance notice nor proper motion filed; (3) it was practically a year since the prosecution had rested its case and the defense had been scheduled to present its evidence; and (4) the evidence presented by the prosecution strongly pointed to the direction of the guilt of the accused prompting respondent Judge to deny the demurrer to evidence.

In his Reply to respondent's comment, complainant argues that he should have been given his day in court with respect to the cancellation of his bail bond. He avers that in the Order of February 9, 2000, respondent Judge ordered his release after finding that no subpoena or notice of hearing was served upon his counsel.

After notice, both parties manifested that they are submitting the case on the basis of the pleadings/records already filed and submitted.

The Court Administrator recommended that respondent Judge Beltran be fined in the amount of two thousand (P2,000.00) pesos for grave abuse of authority with a stern warning that a repetition of the same or similar act shall be dealt with more severely. The Court Administrator opined that the failure of counsel to appear during the scheduled hearing with due notice is not a ground for cancellation of the bail bond of the accused, more so if accused is present during the hearing.

We agree with the Court Administrator.

Respondent's Order of January 31, 2000 for the cancellation of bail actually cited the following grounds therefor, namely: (1) that the counsel of the accused failed to appear at the scheduled hearing; and (2) that the presentation of evidence for the defense has been delayed for almost a year from the time the prosecution rested its case. Respondent Judge further stated that the bail bond is cancelled "specially since the accused is not entitled to bail as a matter of right as the offense charged is

Murder."

Herein complainant was charged with murder punishable by *reclusion perpetua* to death[3] and, under the rules, he was not entitled to bail as "a matter of right". Respondent Judge seems to impress upon the Court that the accused, having been charged with the crime of murder, is not entitled to bail at all or that the crime of murder is non-bailable. This is a misconception. The grant of bail to an accused charged with an offense that carries with it the penalty of *reclusion perpetua,* as in this case, is discretionary on the part of the trial court.[4] In other words, accused is still entitled to bail but no longer "as a matter of right". Instead, it is discretionary and calls for a judicial determination that the evidence of guilt is not strong in order to grant bail. The prosecution is accorded ample 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 in determining whether the guilt of the accused is strong.[5] Accused was granted bail by then Presiding Judge Principe and with such grant we assume that the trial judge made a judicial determination that the evidence of guilt is not strong.

Respondent Judge, in his Comment, argues that the order granting bail had "specifically reserved to the court the right to recall the order granting bail if evidence of conspiracy would be strong." The record is bereft of any copy of such order. Nonetheless, respondent Judge, in effect, is of the view that since the prosecution has rested its case and prosecution evidence had been adduced, he can make his own determination of whether or not the evidence adduced strongly suggest the guilt of the accused and if so, he can cancel the bail previously granted to the accused. Section 20[6] of Rule 114 provides that after the accused shall have been admitted to bail, the court may, "upon good cause shown," either increase or decrease the amount of the same. Needless to state, this would entail a hearing for the purpose of showing "good cause" and hence, would require not only the presence of the accused but also of the latter's counsel. Neither can the bail of the accused be forfeited pursuant to Section 21,[7] Rule 114 since it is not disputed that accused did not violate the conditions of the bail[8] as he was present at the scheduled hearing.

Respondent Judge Beltran also cited the ground that the counsel of the accused failed to appear at the scheduled hearing and that the presentation of evidence for the defense has been delayed for almost a year from the time the prosecution rested its case.

The failure of counsel for the accused to appear at the scheduled hearing is not a valid ground for cancellation of bail. Nowhere in the provisions of Rule 114 does such ground exist. Under Section 2 (Conditions of the bail), the presence of counsel is not a condition of the bail. Neither is it a reason for an increase or forfeiture of bail under Sections 20 and 21. Section 22[9], which states the instances when bail may be cancelled, i.e., surrender of the accused, proof of his death, acquittal of the accused, dismissal of the case or execution of the judgment of conviction is not in point, aside from the fact that it also requires an application of the bondsmen and due notice to the prosecutor.

The alleged delay in the presentation of evidence by the defense is likewise not