

SECOND DIVISION

[A.M. No. RTJ-00-1522, January 20, 2000]

**ROMULO SJ TOLENTINO, STATE PROSECUTOR, COMPLAINANT,
VS. JUDGE POLICARPIO S. CAMANO, JR., REGIONAL TRIAL
COURT, BRANCH 58, TIGAON, CAMARINES SUR, RESPONDENT.**

D E C I S I O N

MENDOZA, J.:

This is a complaint filed by State Prosecutor and Acting Provincial Prosecutor of Camarines Sur Romulo SJ Tolentino against Judge Policarpio S. Camano, Jr. of the Regional Trial Court, Branch 58, Tigaon, Camarines Sur, for gross ignorance of the law, grave abuse of discretion, grave abuse of authority, violation of Canons 1, 2 and 3 of the Canons of Judicial Ethics, and incompetence in connection with the granting of bail to the accused in Criminal Case No. T-1468.

The facts are as follows:

The Office of the Provincial Prosecutor of Camarines Sur filed an information against Roderick Odiaman for allegedly engaging in sexual intercourse with a child in violation of §5(b) of the Child Abuse Act (R.A. No. 7610). The case was filed in the RTC at Tigaon, Camarines Sur and was later assigned to respondent judge of that court. The defense moved to quash the information on the ground that no preliminary investigation had been conducted before the case was filed, whereupon respondent judge on November 15, 1995 ordered complainant state prosecutor to conduct a preliminary investigation. Pending the holding of a preliminary investigation, the accused filed a petition for bail which respondent judge scheduled for hearing on January 9, 1996. However, both complainant state prosecutor and private complainant in the criminal case failed to appear before the court despite due notice. The hearing was reset to January 16, 1996, but, on the said date, complainant state prosecutor again failed to appear despite due notice to him. Just the same, the hearing was postponed to January 24, 1996. The notice of hearing was personally served on complainant state prosecutor, but on the scheduled date, he again failed to appear. Instead, the assistant provincial prosecutor entered a special appearance in the case and moved for another postponement of the hearing. Respondent judge denied the motion, and, on January 30, 1996, granted the petition for bail which he fixed at ₱50,000.00. Respondent judge stated in pertinent parts in his order:

In resolving the Motion to Quash, the court in its Order dated November 13, 1995 denied said Motion finding merit however, on the question of lack of preliminary investigation and as a consequence remanded the case to the prosecutor for preliminary investigation.

Pending preliminary investigation, the accused filed the instant Petition for Bail which were set for hearings on January 9, 16, and 24, 1996,

during which settings the prosecution failed to appear and to adduce evidence to oppose the Petition.

From the foregoing antecedent facts, it can be discerned that the accused is not yet charged in court for violation of Art. III, Section 5(b) of R.A. 7610, his case being under preliminary investigation, [but he] is behind bars.

The issue to be resolved by the court is whether or not a Petition for Bail can be entertained by this court at this stage of the proceedings and under the attendant circumstances.

The court applying Sec. 17(c) of Rule 114 as Amended by Administrative Circular No. 12-94 and adhering to applicable doctrine, resolves the issue in the affirmative.

Sec. 17(c) Rule 114 provides, thus:

"Any person in custody who is not yet charged in court may apply for bail with any court in the province, city or municipality where he is held."

EXPLANATIONS: (Taken from the Book, entitled
"Remedial Law" by O. Herrera, vol. 4,
1994 ed.)

In the case of Go vs. Court of Appeals, G.R. No. 101837, Feb. 11, 1992, the court ruled, thus:

"Where the accused was charged for murder without the benefit of a preliminary investigation and trial had already began over his objections, the accused remains entitled to be released on bail as a matter of right pending the preliminary investigation."

"The filing of the Petition for Bail does not constitute a waiver of accused[']s right to preliminary investigation."

WHEREFORE, premises considered, the Petition for Bail is hereby granted and the bail for the provisional liberty of the accused is hereby fixed at P50,000.00.

SO ORDERED

However, on motion of complainant state prosecutor, respondent judge set aside his order and set the petition for bail on March 4, 1996, "if only to afford the prosecution another chance to present evidence to show that the evidence of guilt is strong."

Complainant state prosecutor again failed to appear although he filed a manifestation questioning the hearing set on the ground that it was premature to consider the question of bail as there was a pending "reinvestigation" of the case before the provincial prosecutor's office. On May 9, 1996, respondent judge issued

an order granting bail to the accused in the increased amount of ₱100,000.00. His order stated:

Any person in custody who is not yet charge[d] in court may apply for bail with any [court] in the province, city, or municipality where [he] is held. (Remedial Law by O. Herrera, Vol. 4, 1994 edition).

In the case at bench, it can be said that the accused is not yet charge[d] in court for Violation of Art. 3, Sec. 5(B) of Republic Act 7610, this case being under preliminary investigation and/or reinvestigation.

The court takes into consideration the health of the accused who is sick with diabetes and lung ailment needing medical attention.

Since the case is still under preliminary investigation and/or reinvestigation, it is needless for the court to make a conclusion of facts or assessment of the prosecution's evidence whether it is strong or not in order not to preempt the outcome of the reinvestigation. Although from a perusal of the Complaint and affidavit executed by Cecille Buenafe and the witnesses, the court could not find any allegations that said Cecille Buenafe is a minor who for money, profit, or any other consideration or due to the coercion of any adult, syndicate or group indulge[s] in sexual intercourse for a fee to be deemed a child exploited in prostitution.

WHEREFORE, premises considered, the Petition for Bail is GRANTED for the temporary liberty of the accused and the same is hereby fixed at ₱100,000.00.

SO ORDERED.

Complainant state prosecutor filed a motion for reconsideration and a notice of appeal, both of which were denied by respondent judge. In his order, dated May 30, 1996, respondent judge ruled:

Invoking denial of due process as a ground, the prosecution moves for the reconsideration of the May 9, 1996 Order of this court granting bail to the accused. The inaccuracy of the allegations so advanced in support of the Motion is readily emphasized by no less than the sequence of the dates of hearing with explicit order to adduce evidence to oppose the Petition for Bail as recited in detail in the questioned Order, thus, evincing the evident effort of the court towards observance of due process for both the defense and the prosecution.

It is basic in law that actual hearing is not an indispensable requisite of due process, but mere opportunity to be heard would suffice. Thus:

"There is no denial of due process where a party is given an opportunity to be heard and to present his case. (Development Bank of the Philippines vs. National Labor Relations Commission, 218 SCRA 183)."

"It is not the denial of the right to be heard but the deprivation of the opportunity to be heard which constitutes a

violation of the due process clause. (Imperial Textile Mills Inc. vs. National Labor Relations Commission, 217 SCRA 237)."

Corollarily, the prosecution cannot feign ignorance of the physical condition of the accused considering his medical records, all certified copies, furnished to this court by Mr. Norberto P. Villamor, Administrative Officer IV of the Bicol Medical Center, Naga City at the instance of Atty. Romulo SJ. Tolentino, Prosecutor on Case which medical records now form part of the record of this case. It cannot be gainsaid that the production of his medical records was the necessary consequence of Atty. Tolentino's previous insistence for the hospital to produce the same. The X-ray result confirms that the accused is suffering from tuberculosis, right upper lobe. Briefly stated, the records of the case strongly rebuff the contention of the prosecution in the Motion for Reconsideration.

Interlocutory orders are not appealable in this jurisdiction. The Order granting bail subject of the instant Motion falls within the ambit of Interlocutory Order.

WHEREFORE, the Motion for Reconsideration is hereby DENIED and the Notice of Appeal incorporated therein is likewise DENIED, both for LACK of MERIT.

SO ORDERED.

On May 31, 1996, respondent judge approved the property bond filed by the accused and ordered his immediate release. Hence, the instant complaint.

Complainant claims that the prosecution was not given an opportunity to adduce evidence to show that the guilt of the accused was strong, and that the bail, which was fixed at ₱100,000.00, was 50% less than the recommended amount in the Bail Bond Guide of 1996. Complainant also claims that respondent judge acted on the petition for bail notwithstanding a pending "reinvestigation" of the case.

In its resolution of November 18, 1996, the Court required respondent judge to comment on the complaint. In addition, it ordered that a copy of the complaint furnished the Department of Justice for possible disciplinary action against complainant state prosecutor for deliberately delaying the administration of justice.

In his comment, dated January 24, 1997, respondent judge alleges:

3. This incident could have not reached this far, if State Prosecutor Romulo SJ. Tolentino cooperated and obeyed the series of Orders issued by this court requiring him to appear and adduce evidence of strong guilt, during the bail hearing.

The petition for bail was filed on December 26, 1995. Said petition was set for hearing by the court on January 9, 1996 where the prosecution and the offended party, Cecile Buenafe, were personally served with subpoenas. The prosecutor and the offended party failed to appear in this scheduled bail hearing. The court in its Order on January 9, 1996, reset the bail hearing to January 16, 1996 and ordered the prosecution to adduce evidence of strong guilt. The bail hearing was again reset to