

FIRST DIVISION

[**A.M. No. RTJ- 04-1845 [FORMERLY A.M. NO. IPI NO. 03-1831-RTJ], October 05, 2011**]

ATTY. FRANKLIN G. GACAL, COMPLAINANT, VS. JUDGE JAIME I. INFANTE, REGIONAL TRIAL COURT, BRANCH 38, IN ALABEL, SARANGANI, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

It is axiomatic that bail cannot be allowed to a person charged with a capital offense, or an offense punishable with *reclusion perpetua* or life imprisonment, without a hearing upon notice to the Prosecution. Any judge who so allows bail is guilty of gross ignorance of the law and the rules, and is subject to appropriate administrative sanctions.

Atty. Franklin Gacal, the private prosecutor in Criminal Case No. 1136-03 of the Regional Trial Court (RTC) in Alabel, Sarangani entitled *People v. Faustino Ancheta*, a prosecution for murder arising from the killing of Felomino O. Occasion, charges Judge Jaime I. Infante, Presiding Judge of Branch 38 of the RTC to whose Branch Criminal Case No. 1136-03 was raffled for arraignment and trial, with gross ignorance of the law, gross incompetence, and evident partiality, for the latter's failure to set a hearing before granting bail to the accused and for releasing him immediately after allowing bail.

Antecedents

On March 18, 2003, Judge Gregorio R. Balanag, Jr. of the Municipal Circuit Trial Court of Kiamba-Maitum, Sarangani issued a warrant for the arrest of Faustino Ancheta in connection with a murder case. Judge Balanag did not recommend bail. Ancheta, who had meanwhile gone into hiding, was not arrested. Upon review, the Office of the Provincial Prosecutor, acting through Assistant Provincial Prosecutor Alfredo Barcelona, Jr., affirmed the findings and recommendation of Judge Balanag on the offense to be charged, and accordingly filed in the RTC an information for murder on April 21, 2003 (Criminal Case No. 1136-03), but with a recommendation for bail in the amount of P400,000.00. Criminal Case No. 1136-03 was raffled to Judge Infante's Branch.

On April 23, 2003, Judge Infante issued twin orders, one granting bail to Ancheta, and another releasing Ancheta from custody.

On April 25, 2003, Atty. Gacal, upon learning of the twin orders issued by Judge Infante, filed a so-called *Very Urgent Motion For Reconsideration And/Or To Cancel Bailbond With Prayer To Enforce Warrant Of Arrest Or Issue Warrant Of Arrest Anew Or In The Alternative Very Urgent Motion For This Court To Motu Prop[r]io Correct*

An Apparent And Patent Error (very urgent motion).

In the hearing of the very urgent motion on April 29, 2003, only Atty. Gacal and his collaborating counsel appeared in court. Judge Infante directed the public prosecutor to comment on the very urgent motion within five days from notice, after which the motion would be submitted for resolution with or without the comment. Ancheta, through counsel, opposed, stating that the motion did not bear the conformity of the public prosecutor.

At the arraignment of Ancheta set on May 15, 2003, the parties and their counsel appeared, but Assistant Provincial Prosecutor Barcelona, Jr., the assigned public prosecutor, did not appear because he was then following up his regular appointment as the Provincial Prosecutor of Sarangani Province. Accordingly, the arraignment was reset to May 29, 2003.

On May 21, 2003, Judge Infante denied Atty. Gacal's very urgent motion on the ground that the motion was *pro forma* for not bearing the conformity of the public prosecutor, and on the further ground that the private prosecutor had not been authorized to act as such pursuant to Section 5, Rule 110, of the *Rules of Court*. Judge Infante directed that the consideration of the bail issue be held in abeyance until after the public prosecutor had submitted a comment, because he wanted to know the position of the public prosecutor on Atty. Gacal's very urgent motion having been filed without the approval of the public prosecutor.^[1]

On May 29, 2003, the public prosecutor appeared, but did not file any comment. Thereupon, Atty. Gacal sought authority to appear as a private prosecutor. The public prosecutor did not oppose Atty. Gacal's request. With that, Atty. Gacal moved for the reconsideration of the grant of bail to Ancheta. In response, Judge Infante required the public prosecutor to file his comment on Atty. Gacal's motion for reconsideration, and again reset the arraignment of the accused to June 20, 2003.^[2]

On June 4, 2003, the public prosecutor filed a comment, stating that he had recommended bail as a matter of course; that the orders dated April 23, 2003 approving bail upon his recommendation and releasing the accused were proper; and that his recommendation of bail was in effect a waiver of the public prosecutor's right to a bail hearing.

By June 20, 2003, when no order regarding the matter of bail was issued, Atty. Gacal sought the inhibition of Judge Infante on the ground of his gross incompetence manifested by his failure to exercise judicial power to resolve the issue of bail.

In his motion for inhibition,^[3] Atty. Gacal insisted that the issue of bail urgently required a resolution that involved a judicial determination and was, for that reason, a judicial function; that Judge Infante failed to resolve the issue of bail, although he should have acted upon it with dispatch, because it was unusual that several persons charged with murder were being detained while Ancheta was let free on bail even without his filing a petition for bail; that such event also put the integrity of Judge Infante's court in peril; and that although his motion for reconsideration included the alternative relief for Judge Infante to *motu proprio* correct his apparent

error, his refusal to resolve the matter in due time constituted gross ignorance of law.

Atty. Gacal contended that Judge Infante was not worthy of his position as a judge either because he unjustifiably failed to exercise his judicial power or because he did not at all know how to exercise his judicial power; that his lack of judicial will rendered him utterly incompetent to perform the functions of a judge; that at one time, he ordered the bail issue to be submitted for resolution, with or without the comment of the public prosecutor, but at another time, he directed that the bail issue be submitted for resolution, with his later order denoting that he would resolve the issue only after receiving the comment from the public prosecutor; that he should not be too dependent on the public prosecutor's comment considering that the resolution of the matter of bail was entirely within his discretion as the judge;^[4] and that the granting of bail without a petition for bail being filed by the accused or a hearing being held for that purpose constituted gross ignorance of the law and the rules.^[5]

Finally, Atty. Gacal stated that Judge Infante and the public prosecutor were both guilty of violating the *Anti-Graft and Corrupt Practices Act*^[6] for giving undue advantage to Ancheta by allowing him bail without his filing a petition for bail and without a hearing being first conducted.^[7]

On July 9, 2003, Judge Infante definitively denied Atty. Gacal's very urgent motion.

On August 5, 2003, the Office of the Court Administrator (OCAAd) received from the Office of the Ombudsman the indorsement of the administrative complaint Atty. Gacal had filed against Judge Infante (CPL-M-03-0581 entitled *Gacal v. Infante, et al.*), forwarding the records of the administrative case for appropriate action to the Supreme Court as the exclusive administrative authority over all courts, their judges and their personnel.^[8]

On August 21, 2003, then Court Administrator Presbitero J. Velasco, Jr. (now a Member of the Court) required Judge Infante to comment on the administrative complaint against him, and to show cause within 10 days from receipt why he should not be suspended, disbarred, or otherwise disciplinarily sanctioned as a member of the Bar for violation of Canon 10, Rule 10.03 of the *Code of Professional Responsibility* pursuant to the resolution of the Court *En Banc* in A.M. No. 02-9-02-SC dated September 17, 2002.^[9]

On October 6, 2003, the OCAAd received Judge Infante's comment dated September 22, 2003, by which he denied any transgression in the granting of bail to Ancheta, stating the following:

2. At the outset, as a clarificatory note, accused Faustino Ancheta is out on bail, not because he applied for bail duly granted by the court but because he posted the required bail since in the first place the Fiscal recommended bail, duly approved by the Undersigned, in the amount of P400,000.00. Underscoring is made to stress the fact that accused Ancheta had actually never filed an application for bail. Perforce, the court had nothing to hear, grant or deny an application/motion/petition

for bail since none was filed by the accused.

3. Thus, the twin Orders dated April 23, 2003 are exactly meant as an approval of the bailbond (property) posted by accused Ancheta, it being found to be complete and sufficient. They are not orders granting an application for bail, as misconstrued by private prosecutor. (Certified true machine copy of the twin Orders dated April 23 marked as Annex-2 and 2-a are hereto attached)

4. On April 25, 2003, private complainant in the cited criminal case, thru counsel (the Gacal, Gacal and Gacal Law Office), filed a "Very Urgent Motion for Reconsideration or in the alternative Very Urgent Motion for this Court to Moto Propio Correct an Apparent Error", praying that the twin Orders dated April 23, 2003 be reconsidered. (Certified machine copy of the said urgent motion marked as Annex 3 is hereto attached)

5. On April 29, 2003, during the hearing on motion, the private complainant and his counsel (private prosecutor) appeared. The Fiscal was not present. The court nonetheless ordered the Fiscal to file his comment/s on the said motion. The accused thru private counsel in an open court hearing opposed the subject motion inasmuch as the same bears no conformity of the Fiscal. In that hearing, the court advised the private prosecutor to coordinate and secure the conformity of the Fiscal in filing his motion. (Certified machine copy of the Order dated April 29, 2003, marked as Annex 4 is hereto attached.)

6. On May 15, 2003, the scheduled date for the arraignment of accused Ancheta, the parties and private prosecutor appeared. Again, the 1st Asst. Provincial Fiscal, Alfredo Barcelona, Jr., failed to appear who, being the next highest in rank in their Office, was processing his application for regular appointment as Provincial Fiscal of Sarangani Province. He was then the Acting Provincial Fiscal - Designate in view of the appointment of former Provincial Fiscal Laureano T. Alzate as RTC Judge in Koronadal City. Due to the absence of the Fiscal and the motion for reconsideration then pending for resolution, the scheduled arraignment was reset to May 29, 2003, per Order dated May 15, 2003, (certified machine copy of which marked as Annex 5 is hereto attached).

7. On May 21, 2003, the Undersigned resolved to deny for being pro forma the pending motion for reconsideration. As held in the Order of denial, it was found that the private prosecutor was not duly authorized in writing by the provincial prosecutor to prosecute the said criminal case, nor was he judicially approved to act as such in violation of Section 5, Rule 110 of the Revised Rules on Criminal Procedure. The bail issue, however, was held in abeyance until submission of the comment thereon by the Fiscal as this Presiding Judge would like then to know the position of the Fiscal anent to the cited motion without his approval. The arraignment was reset to June 20, 2003. Again, the private prosecutor was orally advised to coordinate and secure the approval of the Fiscal in filing his motions/pleadings. (Certified machine copy of the Order dated May 21, 2003 marked as Annex 6 hereto attached)

8. On June 4, 2003, the Fiscal finally filed his "Comment on the Very Urgent Motion for Reconsideration filed by private complainant thru counsel (private prosecutor). Consistently, the Fiscal in his comment recommended bail as a matter of course and that he claimed that Orders dated April 23, 2003 approving bail upon his recommendation are proper, waiving in effect his right for a bail hearing. (Certified true machine copy of the Fiscal's comment marked as Annex-7 is hereto attached).^[10]

Under date of February 16, 2004, the OCAAd recommended after investigation that the case be re-docketed as a regular administrative matter, and that Judge Infante be fined in the amount of P20,000.00,^[11] viz:

EVALUATION: The 1987 Constitution provides that, all persons, except those charged with offenses punishable by reclusion perpetua when the evidence of guilt is strong, shall before conviction, be bailable by sufficient sureties or be released on recognizance as may be provided by law (Sec. 13, Art. III).

The Revised Rules of Criminal Procedure provides that, no person charged with a capital offense or offense punishable by reclusion perpetua or life imprisonment shall be admitted to bail when the evidence is strong, regardless of the stage of the criminal prosecution (Sec. 7, Rule 114).

With the aforequoted provisions of the Constitution and the Rules of Criminal Procedure as a backdrop, the question is: Can respondent judge in granting bail to the accused dispense with the hearing of Application for Bail?

The preliminary investigation of Criminal Case No. 03-61, entitled Benito M. Occasion vs. Faustino Ancheta for Murder was conducted by Judge Gregorio R. Balanag, Jr., of MCTC, Kiamba-Maitum, Sarangani. Finding the existence of probable cause that an offense of Murder was committed and the accused is probably guilty thereof, he transmitted his resolution to the Office of the Provincial Prosecutor, together with the records of the case, with No Bail Recommended. Upon review of the resolution of the investigating judge by the OIC of the Office of the Provincial Prosecutor of Sarangani, he filed the information for Murder against accused Faustino Ancheta but a bail of P400,000.00 for the provisional liberty of the latter was recommended. Relying on the recommendation of the Fiscal, respondent judge granted the Application for Bail of the accused.

The offense of Murder is punishable by reclusion temporal in its maximum period to death (Art. 248, RPC). By reason of the penalty prescribed by law, Murder is considered a capital offense and, grant of bail is a matter of discretion which can be exercised only by respondent judge after the evidence is submitted in a hearing. Hearing of the application for bail is absolutely indispensable before a judge can properly determine whether the prosecution's evidence is weak or strong (People vs. Dacudao, 170 SCRA 489). It becomes, therefore, a