

SECOND DIVISION

[A.M. NO. MTJ-05-1582 (FORMERLY OCA I.P.I. NO. 03-1492-MTJ), February 28, 2005]

ANTONIO OCENAR, COMPLAINANT, VS. JUDGE ODELON S. MABUTIN, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

In a verified Complaint^[1] filed before the Office of the Court Administrator (OCA), Antonio Ocenar charges Judge Odelon S. Mabutin, Municipal Trial Court (MTC) of Catbalogan, Samar, with grave misconduct and gross ignorance of the law. In support thereof, Ocenar narrates: On 05 November 2002 at 10:30 p.m., Raymund Monsanto was arrested by the police officers of Catbalogan, Samar, in a buy-bust operation. Confiscated from him were shabu paraphernalia, money, and 3.8 grams of shabu. A case for violation of Section 5 of the Dangerous Drugs Act was filed against Monsanto who was held behind bars. Respondent judge conducted the preliminary investigation of the case which was terminated on 07 January 2003. However, even before the conclusion of the preliminary investigation, respondent judge approved the motion for bail of Monsanto in the amount of P150,000 on 26 December 2002. A motion to reduce bailbond filed by Monsanto was again granted by the respondent and bail was reduced to P120,000; whereupon, accused was released from prison.

From the point of view of the Complainant, Monsanto is not entitled to bail and the granting thereof was a violation of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) inasmuch as Section 5 provides that the penalty for the alleged crime is life imprisonment to death. Complainant submits that the Respondent gave undue favor to Monsanto because the latter is a grandson of Judge Sinforiano A. Monsanto who is the Executive Judge of the Regional Trial Court (RTC) of Catbalogan, Samar. In contrast, in another criminal case (Crim. Case No. Y3-H-330 entitled, People v. Felix Bantugan), likewise for violation of Section 5 of Rep. Act No. 9165, the accused therein, Felix Bantugan, who was arrested in a police buy-bust operation and caught in possession of 0.06 grams of shabu, was denied his bail by respondent. In sum, Complainant challenges the propriety of the grant of bail by the respondent to the accused Monsanto.

Per 1st indorsement of the OCA dated 23 October 2003,^[2] respondent judge was required to Comment on the Complaint.

In his Comment,^[3] respondent judge takes exception to the accusation of the complainant stating, first and foremost, that the instant administrative complaint is not the first time the Complainant dragged the respondent to an unnecessary suit. Previously, in OCA I.P.I. No./Adm. Matter No. 99-778- MTJ, complainant filed against respondent a case for partiality, incompetence and ignorance of the law which this

Court dismissed for lack of merit in a Resolution dated 05 February 2001.^[4] Respondent surmised that the first complaint was an offshoot of a case of which complainant was a party as judgment-obligor whose assets were subjected to execution and where respondent presided at the execution stage.

Respondent stated that in view of Monsanto's application for bail, the case was heard on 12, 17, 19 and 20 December 2003. While respondent admits that initially there was no notice given to the Office of the Provincial Prosecutor (OPP) of Samar, there was really no irregularity of procedure taken inasmuch as clarificatory hearings (*i.e.*, cases for preliminary investigations) are heard without the appearance of the prosecutor considering that the MTC and the prosecutor's office are on equal footing in conducting preliminary investigations. Respondent points out that on 12 December 2002, during the initial hearing of Monsanto's application for admission to bail, it was Judge Salvador Jakosalem - as Presiding Judge designate - who presided over the case as he (respondent) was on leave. As the Order^[5] of the Court on that day would bear out, Police Senior Inspector Joseph N. Pensotes, representing the prosecution, sought for and was granted additional time to consult the OPP which has control and supervision over the prosecution of the case. At the next hearing on 17 December 2002, respondent informed the prosecutor assigned to the court, Prosecutor Dhida L. Lim, regarding Monsanto's application for bail. Lim merely stated that she would not appear and intervene in the application for bail because the case was only in the preliminary investigation stage, as such, any and all incidents will ultimately be subject to their review in the OPP.

On the authority of the respondent to grant bail, he cites Rule 114, Sections 4 and 17(b) of the Revised Rules of Criminal Procedure to justify his action.

On the charge of partiality due to the grant of bail to Monsanto and the denial of bail to Bantugan, the reason proffered by respondent is simply because no bail was applied for by Bantugan. The fact of non-application for bail is attested by a certification, to that effect issued by Mr. Alfredo Bardaje, Administrative Officer III of the OPP of Samar.^[6]

Relative to the allegation that he is a protégé of Judge Monsanto, respondent denies the same and instead claims that he comes from another town in Samar, Sta. Margarita, while Judge Monsanto hails from Calbayog City. He never had any dealings with Judge Monsanto except on a purely professional basis such as when "he had to go to Judge Monsanto's office to research, the IBP officers induction, their attendance in judge's seminars, Christmas party of the trial court, encounters during town fiestas, and the blow-out of Judge Monsanto when he was chosen as centennial judge for Region VIII." Other than those instances, there was never any time where respondent dealt with Judge Monsanto personally. Neither have they asked any favors from one another and certainly not in the criminal case involving the accused Monsanto.

Referred to the OCA, the OCA recommended that the complaint be dismissed for lack of merit.^[7]

We concur in the recommendation of the OCA.

Evidence for the prosecution presented during the hearings conducted for the

purpose of determining accused Monsanto's right to bail shows that on 05 November 2002, accused Monsanto was arrested at Purok 1, Barangay 13, Catbalogan, Samar, in a buy-bust operation. Recovered from him were one (1) piece heat sealed transparent plastic sachet containing a white crystalline substance locally known as shabu weighing more or less 4.0 grams and buy-bust money of Seven Thousand Five Hundred Pesos (P7,500).^[8] A complaint dated 06 November 2002 for violation of Sections 5 and 15 both of Rep. Act No. 9165, The Comprehensive Dangerous Drugs Act of 2002, specifically for illegal sale and use of dangerous drugs was filed against accused Monsanto before the MTC where respondent judge is presiding.^[9] On 02 December 2002, accused Monsanto, through counsel, filed an application for admission to bail.^[10] As earlier stated, the preliminary hearing on the application for admission to bail took place on 12 December 2002 where a judge-designate, Judge Salvador P. Jakosalem presided owing to the absence of the respondent. A subsequent hearing was held on 17 December 2002 where Prosecutor Dhida L. Lim manifested that she would not intervene in the application for bail considering that the case is only in the preliminary investigation stage and the same would ultimately be subject to their review.^[11] Another hearing was held on 19 December 2002 where the services of Atty. Jorge L. Almaden, a lawyer from the Philippine National Police Regional Legal Services, appeared for the prosecution, engaged by Inspector Pensotes, team leader of the group that conducted the buy-bust operation on Monsanto.^[12] Atty. Almaden appeared during the hearings and presented evidence for the prosecution.

In *Te v. Perez*,^[13] this Court held:

. . . We reiterate the following duties of judges in case an application for bail is filed:

1. In all cases, whether bail is a matter of right or discretion, *notify the prosecutor* of the hearing of the application for bail or require him to submit his recommendation;
2. Where bail is a matter of discretion, *conduct a hearing* of the application for bail *regardless of whether or not the prosecution refuses to present evidence* to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion;
3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution; and
4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond. Otherwise the bail should be denied.^[14]

Restated in the more recent case of *Managuelod v. Judge Paclibon, Jr.*:^[15]

The duties of a judge, in case an application for bail is filed, are to: (1) notify the prosecutor of the hearing on the application for bail or require him to submit his recommendation; (2) conduct a hearing on the application for bail whether or not the prosecution presents evidence to show that the guilt of the accused is strong, to enable the court to exercise its discretion; (3) decide whether the evidence of guilt of the