

SECOND DIVISION

[A.M. No. RTJ-03-1751, June 10, 2003]

**COMMISSIONER ANDREA D. DOMINGO, COMPLAINANT, VS.
EXECUTIVE JUDGE ERNESTO P. PAGAYATAN, RTC, BRANCH 46,
SAN JOSE, OCCIDENTAL MINDORO, RESPONDENT.**

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

In a letter-complaint dated December 7, 2001 filed with the Office of the Court Administrator, Commissioner Andrea D. Domingo of the Bureau of Immigration (BOI) charged Executive Judge Ernesto P. Pagayatan of the Regional Trial Court of San Jose, Occidental Mindoro (Branch 46) with Gross Ignorance of the Law relative to Criminal Case No. R-5075 for Estafa, entitled *People of the Philippines vs. Ernesto M. Peñaflorida*.

Complainant alleged: On September 14, 2001, the Bureau of Immigration (BOI) Board of Commissioners (BOC) issued Summary Deportation Order (SDO) No. ADD-2001-057 against Ernesto M. Peñaflorida, a U.S. citizen, after finding that he is an overstaying and undocumented alien, in violation of Section 37(a)(7) of Commonwealth Act No. 613, otherwise known as the Philippine Immigration Act of 1940. Peñaflorida is also a fugitive from justice since he stands indicted in the United States for health care fraud which resulted in more than \$1,376,000.00 losses to the U.S. Federal Government. No appeal was filed with the Office of the President. The SDO became final and executory on October 15, 2001. On the same date, respondent issued a Notice of Arraignment requiring the production of Peñaflorida on November 19 and 20, 2001. On the scheduled hearing of November 19, 2001, respondent denied the P40,000.00 bail recommended by the Provincial Prosecutor for the provisional release of the accused on the ground that the crime Peñaflorida was charged with involved large scale estafa, a non-bailable offense. Respondent ordered the commitment of Peñaflorida to the Provincial Jail in Magbay, San Jose, Occidental Mindoro. However, later on that same day, the BOI received information that respondent had allowed the release from detention of Peñaflorida, who is an alien federal fugitive, without the interdepartmental courtesy of affording prior notice to the BOI of such action. She is appalled not only by the respondent's employment of legal subterfuges in ordering the release of Peñaflorida whose Summary Deportation Order had already become final and executory, but also by the respondent's bad faith in deceiving them into surrendering the custody of an undesirable alien federal fugitive to the Provincial Jail at Magbay, San Jose, Occidental Mindoro.^[1]

In his Comment, dated March 22, 2002, respondent explained: On November 20, 2001, Peñaflorida filed an urgent motion to fix bail. When the prosecution and the defense jointly manifested that it would be fair and just if the court would fix the bail bond for the provisional release of the accused Peñaflorida at P250,000.00, he

granted the motion to fix bail on November 21, 2001; and, at the time he issued the Order fixing the bail bond of the accused at P250,000.00, he was not aware that a deportation order had already been issued by the BOI against the latter.^[2]

In a Resolution dated January 15, 2003, the Court re-docketed the administrative complaint as a regular administrative matter and required the parties to manifest within ten days from notice if they are willing to submit the case for decision based on the pleadings filed by the parties.^[3]

In compliance, the complainant and the respondent manifested their willingness to submit the case on the basis of the pleadings.^[4] In addition to his manifestation, however, respondent averred: Upon learning that an order of deportation was issued against Peñafiorida, he ordered the cancellation of the bail bond posted by Peñafiorida and issued a warrant for the latter's arrest on April 26, 2002; and that Peñafiorida voluntarily surrendered himself on October 24, 2002 and is presently detained at the Provincial Jail of Occidental Mindoro.^[5]

In its Evaluation Report, the Office of the Court Administrator (OCA) recommends to the Court that respondent be fined P5,000.00 for Gross Ignorance of the Law, reasoning that:

After going over the records of the case, it is very evident that respondent Judge acted with undue haste in issuing the order granting bail considering the fact that in his earlier Order dated November 19, 2001, he did not grant a bail of P40,000.00 which the Provincial Prosecutor had previously recommended for the provisional release of the accused. His denial was based on the ground that the case filed against the accused could be considered large-scale Estafa, an unbailable offense. Respondent Judge should not have granted bail simply on the lack of readiness on the part of the prosecution to present any witness to prove that the evidence of guilt of the accused was strong but should have endeavored to determine the existence of such evidence.

Under the present rules, a hearing is required before granting bail whether it is a matter of right or discretion. The prosecution must always be given an opportunity to present within a reasonable time, all the evidence that it may desire to introduce before the Court may resolve the motion for bail. If the prosecution refuses to adduce evidence or fails to interpose an objection to the motion for bail, it is still mandatory for the court to conduct a hearing or ask searching and clarificatory questions.

Moreover, since the accused was accompanied by the personnel of the Bureau of Immigration when brought to the RTC, Branch 46, San Jose, Occidental Mindoro, for his arraignment in Criminal Case No. R-5075 respondent Judge could have easily verified from his escort if the former was being detained for other crimes aside from the one where he was being arraigned in respondent's sala. Had he done so, respondent could have been informed outright by the B.I. personnel escort that the accused had already been the subject of a Summary Deportation Order and, thus, he could have deferred action on the latter's (accused) Motion to Fix Bail and afforded the Bureau of Immigration the chance and

opportunity to interpose their objection to the grant thereof.^[6] (Citations omitted).

The Court agrees with the findings and recommendation of the OCA.

Under the rules on bail, a hearing is mandatory in granting bail whether it is a matter of right or discretion.^[7] A hearing is indispensable for the court to ask searching questions from which it may infer the strength of the evidence of guilt, or the lack of it, against the accused, in cases where the offense is punishable by death, *reclusion perpetua* or life imprisonment.^[8] After hearing, the court's order granting or refusing bail must contain a summary of the evidence for the prosecution and based thereon, the judge should then formulate his own conclusion as to whether the evidence so presented is strong enough as to indicate the guilt of the accused.^[9] Otherwise, the order granting or denying the application for bail may be invalidated because the summary of evidence for the prosecution which contains the judge's evaluation of the evidence may be considered as an aspect of procedural due process for both the prosecution and the defense.^[10]

The herein respondent granted bail to the accused Peñaflorida without conducting a hearing despite his earlier pronouncement in the Order dated November 19, 2001 denying bail as he considered the crime the accused Peñaflorida was charged with to be a non-bailable offense. The manifestation of the prosecutor that he is not ready to present any witness to prove that the prosecution's evidence against the accused is strong, is never a basis for the outright grant of bail without a preliminary hearing on the matter.^[11] A hearing is required even when the prosecution refuses to adduce evidence or fails to interpose an objection to the motion for bail.^[12]

The joint manifestation of the prosecution and the defense that it would be fair and just if the court would fix the bail bond for the provisional release of the accused at P250,000.00 does not justify the granting of bail without a hearing in a case involving a non-bailable offense. A hearing is necessary for the court to take into consideration the guidelines in fixing the amount of bail^[13] set forth in Section 9, Rule 114 of the Revised Rules of Criminal Procedure, which reads:

SEC. 9. Amount of bail; guidelines. — The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to the following factors: nona

- (a) Financial liability of the accused to give bail;
- (b) Nature and circumstance 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;