

FIRST DIVISION

[A.M. No. MTJ-96-1072, January 31, 1996]

DANIEL MAMOLO, SR., COMPLAINANT, VS. JUDGE ROGELIO R. NARISMA, MUNICIPAL CIRCUIT TRIAL COURT, BR. 1, BANSALAN-MAGSAYSAY, DAVAO DEL SUR, RESPONDENT.

D E C I S I O N

BELLOSILLO, J.:

In his letter to the Secretary of Justice dated 6 June 1994 and endorsed by the Department of Justice to the Office of the Court Administrator on 8 July 1994 for appropriate action complainant Daniel Mamolo Sr. seeks an independent investigation concerning the immediate grant of bail allegedly without hearing by respondent Judge Rogelio R. Narisma, Municipal Circuit Trial Court, Br. 1, Bansalan-Magsaysay, Davao, to accused Antonio Balagot in Crim. Case No. 1765(94)-B who was charged with the capital offense of murder.

On 16 May 1994 a criminal complaint for murder was filed against Antonio Balagot and Ariel Acha before the MCTC of Bansalan-Magsaysay, Davao del Sur, for the murder of Daniel Mamolo, Jr., son of complainant, docketed as Crim. Case No. 1765(94)-B. After Judge Rogelio R. Narisma conducted the requisite preliminary examination he issued the corresponding warrants of arrest against the accused. Respondent Judge recommended no bail since murder is a capital offense and the evidence of guilt was strong. Acha was later arrested while Balagot surrendered to the PC Provincial Command in Cotabato.

Subsequently, Balagot through counsel filed a *Petition For Admission to Bail* and set the same for hearing on 25 May 1994. At the scheduled hearing defense counsel informed the court that Balagot was ill and asked the court to dispense with the submission of his petition and, instead, to allow Balagot to be treated at the hospital.

Complainant claims that despite the fact that respondent Judge recommended no bail for both accused he nevertheless allowed Balagot to put a bail of P150,000.00 without giving the prosecution the opportunity to present its evidence to prove that the evidence of guilt against the accused was strong.

Complainant also avers that on several occasions he saw respondent Judge and counsel for accused Balagot together and engaged in a series of private talks at a nearby restaurant. Complainant also alleges that respondent's highly irregular actuation led him (complainant) to entertain thoughts on "How much was the reason why the *Petition for the Admission to Bail* was secretly and favorably granted over the objection of the prosecution much less giving (the prosecution) a chance to present the evidence of guilt."

On the other hand, respondent Judge asserts that he approved Balagot's Petition for Admission to Bail after conducting a hearing on 25 May 1994 and upon the *Manifestation* of 2nd Asst. Provincial Prosecutor Quinones that he was submitting the resolution of the petition to the sound discretion of the court.

Respondent denies having received anything from accused Balagot, pointing out that the prosecution's *Traverse To the Petition for Admission to Bail* was not filed in court and therefore was not appreciated in resolving the petition; and, that the prosecution did not appeal the order granting bail.

Respondent Judge likewise denies having met and talked to counsel for Balagot on several occasions. He admits however that he saw counsel only once at an eatery while taking his lunch and that counsel merely inquired then within hearing distance of several persons whether the petition for bail could be filed in the municipal court, so that respondent was constrained to talk to counsel as the latter was already in front of him.

In his *Memorandum* of 21 July 1995, approved by Court Administrator Ernani Cruz Paño, Deputy Court Administrator Reynaldo L. Suarez found that respondent Judge disregarded procedural due process in granting bail to the accused. He opined that the prosecution's waiver to present evidence ought to have prompted respondent Judge "to ask the prosecution to present its witnesses at another date set for the purpose (of asking) clarificatory questions from which he may infer the strength of the evidence of guilt of the accused." DCA Suarez then submitted the instant case to the Court upon finding no further necessity for an extended investigation. He also informed the Court that respondent Judge was on 3 July 1995 appointed RTC Judge of Br. 23, Kidapawan, North Cotabato.

We agree with OCA's evaluation. The procedure of conducting a hearing on the application for admission to bail should provide the basis for judges to determine whether the prosecution's evidence is weak or strong. In the case at bench, while respondent conducted a hearing on Balagot's petition for bail such proceeding did not elicit evidence from the prosecution to guide respondent in the proper determination of the petition. A review of the TSN of the 25 May 1994 hearing^[1] reveals that only the amount of bail was discussed after an impasse on the plea regarding the confinement of the accused -

Atty. Palmones (counsel for accused):

Another proposal we are submitting for consideration by this Hon. Court and the prosecution: accused is willing to put up bond for his temporary liberty in the amount of P100,000.00 just to assure the court and the prosecution that the accused will face charges against him.

Prosecutor Quinones:

I will first consult my head of office regarding the proposal of the accused.

Court: