

THIRD DIVISION

[A.M. RTJ-94-1266, August 21, 1996]

ARMANDO CONTRERAS, COMPLAINANT, VS. JUDGE CESAR M. SOLIS, RESPONDENT.

D E C I S I O N

MELO, J.:

The instant administrative case against respondent Judge Cesar M. Solis stemmed from his orders releasing the accused on bail in a habeas corpus proceeding and his subsequent order directing the re-arrest of the said accused.

The antecedent facts of the case are as follows:

On November 8, 1992, prior to the filing of a petition for habeas corpus before the sala of herein respondent Judge Solis, and information was filed against Rufino Mamangon, a PNP member, for the murder of Gener Contreras. The case was raffled to Branch 18 of the Regional Trial Court of the Third Judicial Region stationed in Malolos, Bulacan, presided over by Judge Demetrio Macapagal Sr. On May 31, 1994, Judge Macapagal dismissed the criminal case for lack of jurisdiction and accordingly directed the branch clerk of court to forward the complete record of the case to the Sandiganbayan. Mamangon was not, however, released from detention despite the dismissal of the criminal case, prompting him on July 20, 1994, to file a petition for *habeas corpus*. The petition was raffled to the branch (No. 21) presided over by herein respondent Judge Cesar M. Solis. Respondent, in an order dated July 27, 1994, dismissed the petition for lack of merit. On August 4, 1994, acting on a motion for reconsideration filed by Mamangon, respondent issued an order authorizing the release of Mamangon from the provincial jail upon the posting of a cash bond in the amount of P25,000.00. A motion for reconsideration was filed by the provincial prosecutor which prompted respondent judge to cancel the cash bond posted by Mamangon and to order his re-arrest. Thereupon, Armando Contreras, brother of the victim Gener Contreras, filed the instant complaint.

Complainant alleged that on the morning of August 1, 1994, when he went to the office of respondent he was told by the latter that Mamangon is willing to give P25,000.00 for his release. It appears, according to complainant, that if he would give the same amount of money, respondent would no longer release Mamangon.

According to complainant, respondent also gravely abused his discretion and authority when he ordered the release of the accused upon the posting of the cash bond; that it is not within the authority of respondent to release the accused considering that his authority in a *habeas corpus* proceeding is to determine whether or not the detention of the accused is legal or illegal. Moreover, it was contended, respondent has no authority to order the re-arrest of the accused in the same proceeding.

On July 3, 1996, Deputy Court Administrator Zenaida N. Elepaño submitted her report with the following evaluation:

A. On the Charge of Dishonesty/Extortion

Respondent insists he never asked money from complainant. He merely instructed one of his staff to advise Armando Contreras about the *habeas corpus* proceeding so that he can participate in it. It was quite late in the afternoon of that day and the "clerks were no longer available to type the notice or order." He also explains that complainant misconstrued his mentioning an amount, i.e., P20,000.00 to be extortion when all he meant was that this would be how much he will spend to hire a lawyer to represent his cause in the proceedings.

The protestations of respondent Judge are not exactly persuasive. At once certain questions beg to be asked. For instance, if his sole interest in asking Contreras to see him in his office was to afford the former the opportunity to "participate" in the *habeas corpus* case, why express such interest at a very late stage, i.e., after he had issued a decision thereon and after petitioner filed a Motion for Reconsideration of the decision? Noteworthy is that the petition was filed on 20 July 1994, set for hearing six (6) days later or on 26 July, and the decision rendered the following day. Judge Solis could have very well notified complainant about the proceeding as soon as the petition was filed by simply furnishing him copy of his Order setting the case for hearing on 26th July. But he did not. Strangely enough, he waited until after the last working hour of Friday, 29th July, to "notify" Contreras of his desire to meet him at the very early hour of 7 o'clock in the morning of 1 August. Why then did the judge schedule the meeting at an early hour that morning even before court employees arrived for work? Was it only for the purpose of telling complainant that he can participate in the proceeding, or more specifically, in the hearing of the Motion for Reconsideration, and that he should engage the services of a good lawyer for P20,000.00? If it was, then in my view, the meeting was absolutely unnecessary. The judge denies that he propositioned complainant, and complainant informs the Court that he did not pay the amount "proposed". At any rate on 8 August 1994 Judge Solis *motu proprio* issued two Orders for the posting of a cash bond for P25,000.00 by accused Mamangon and his release from jail, and transmittal of the records of the case to Sandiganbayan.

While no proof has been submitted to the Court by complainant as to attempted extortion by respondent judge other than his verified letter-complaint, still, the actuations of respondent leave much to be desired since these easily lend[s] to suspicions of dishonesty. On this score alone, respondent should be properly advised to avoid occasions where his acts may arouse suspicions of irregularity.

B. On the Grant and Subsequent Cancellation of Bail Constituting Grave Abuse of Authority, Grave Misconduct and Incompetence

Section 3, Rule 114 of the Rules of Court provides that all persons in

custody shall, before final conviction, be entitled to bail as a matter of right, except when charged with a capital offense or an offense which, under the law at the time of its commission and at the time of the application for bail, is punishable by *reclusion perpetua* when evidence of guilt is strong.

Criminal Case No. 2406-M-92 for MURDER was filed on 5 November 1992 when the penalty imposable at the time for the crime of murder was *reclusion temporal* in its maximum period to *reclusion perpetua*. Significantly, the records do not show that an application for bail was filed with the court trying the criminal case. Neither do they show that such an application was filed with respondent Judge in the *habeas corpus* proceedings. Complainant has pointed this out in his complaint because it appears that the grant of bail to the accused by respondent Judge Cesar M. Solis and the corresponding approval of his cash bond in the amount of P25,000.00 as shown in the Orders dated 4 August 1994 (p. 27) and 8 August 1994 (p. 28), respectively, was in the thinking of the judge, a matter of right for the accused.

An analysis of the submissions of respondent Judge on this point shows that in issuing the aforesaid Orders, he relied on the provisions of Sec. 14 of Rule 102 which state:

"Sec. 14. When person lawfully imprisoned, recommitted, and when let to bail. - If it appears that the prisoner was lawfully committed, and is plainly and specifically charged in the warrant of commitment with an offense punishable by death, he shall not be released, discharged, or bailed. If he is lawfully imprisoned or restrained on a charge of having committed an offense not so punishable, he may be recommitted to imprisonment or admitted to bail in the discretion of the court or judge. If he be admitted to bail, he shall forthwith file a bond in such sum as the court or judge deems reasonable, considering the circumstances of the prisoner and the nature of the offense charged, conditioned for his appearance before the court where the offense is properly cognizable to abide its order or judgment; and the court or judge shall certify the proceedings, together with the bond, forthwith to the proper court. If such bond is not so filed, the prisoner shall be recommitted to confinement."

In the Order dated 24 August 1994 (p. 16, Rollo) respondent Judge justified his reliance on the aforequoted provision pointing to Section 2, Rule 72 of the Rules of Court which provides that in the absence of special provisions, the rules provided for in ordinary actions shall, as far as practicable, be applicable in special proceedings. A *habeas corpus* belongs to the category of special proceedings.

In the same Order, Judge Solis further argued that because of Sec. 14 of Rule 102, he took into consideration the fact that since the penalty for the crime at the time was only *reclusion perpetua* and not death, he did not find it necessary to apply the provisions of criminal procedure on bail.

I am not convinced of the reasons proffered by respondent Judge.

The accused never applied for bail. Consequently, it was improper for and erroneous of respondent judge to advocate for the accused and *motu proprio* grant him bail sans application. Compounding this was that despite the fact that the penalty for the crime for which the accused was detained was reclusion perpetua, no hearing was ordered by the judge to give prosecution a chance to show that the evidence against the accused was strong as to preclude bail. It is my position that the grant of bail under Sec. 14 of Rule 102 of the Rules does not do away with the basic requirements set forth in Rule 114 of the Rules on Criminal Procedure on Bail since the former merely prescribes supplemental rules on bail for habeas corpus proceedings. The argument of respondent that he merely interpreted Sec. 14 of Rule 102 "to the best interest of justice and fair play" considering that the murder case had been dismissed by Branch 18, the accused had been detained for a long period and that he had a family to support are specious, being irrelevant, in the face of the express requirements of the Rules. More importantly, the application of Sec. 14 of Rule 102 of the Rules is erroneous because while Sec. 14 speaks of a prisoner lawfully restrained, Mamangon in this case was being unlawfully restrained despite the dismissal of the case against him on the ground of lack jurisdiction (sic). Respondent therefore should have forthwith ordered Mamangon's release from jail. Instead, he granted bail which was not even necessary. This however cannot be construed as malicious, it appearing merely to be an error of judgment.

Respondent's misapplication of the law was further aggravated when upon motion by prosecution and complainant herein, he cancelled the cash bond posted by Mamangon and ordered his re-arrest for the reason that *such is allowed by the self-same provision upon which he based his Order granting bail to Mamangon*, and considering further that [the] Mamangon's release would endanger the life of complainant and that of his family and relatives.

A close reading of the rule alluded to shows that while discretion is afforded the judge to grant bail, no discretion is authorized in the cancellation thereof, for the rules limit the instances under which bail may be cancelled. Thus, Sec. 22 of Rule 114 applies, quoted hereunder:

Cancellation of bail bond. - Upon application filed with the court and after due notice to the prosecutor, the bail bond may be cancelled upon surrender of the accused or proof of his death.

The bail bond shall be deemed automatically cancelled upon acquittal of the accused or dismissal of the case or execution of the final judgment of conviction.

In all instances, the cancellation shall be without prejudice to any liability of the bond.