The Right of an Accused to Bail in Capital Offenses — An Illusion

Romeo B. Fortes[*]

I. INTRODUCTION

Under the Bill of Rights, "[a]ll persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law."[1] The Revised Rules on Criminal Procedure similarly provides that

> [a]ll persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment.[2]

In defining the duration of the penalty of *reclusion perpetua*, the Revised Penal Code (RPC)[3] states that "[a]ny person sentenced to any of the perpetual penalties shall be pardoned after undergoing the penalty for [30] years, unless such person by reason of his [or her] conduct or some other

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* '79 LL.B., University of the East College of Law. The Author is a Partner at the Sapalo Velez Bundang and Bulilan Law Offices.

Cite as 58 ATENEO L.J. 425 (2013).

1. PHIL. CONST. art. 3, § 13.
2. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 114, § 4.
3. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815 (1932).

serious cause shall be considered by the Chief Executive as unworthy of pardon."[4]

What is a capital offense? A capital offense is defined as "an offense which, under the law existing at the time of its commission and of the application for admission to bail, may be punished with death."[5] The 1987 Constitution restricted the imposition of the death penalty,[6] and on 24 June 2006, Republic Act (R.A.) No. 9346 was approved, which prohibited the imposition of the death penalty.[7] In lieu of the death penalty, the following penalties were imposed: "(a) the penalty of *reclusion perpetua*, when the law violated makes use of the same nomenclature of penalties of the [RPC]; or (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the [RPC]."[8]

Under the Bill of Rights, "[n]o person shall be deprived of life, liberty, or property without due process of law[.]"[9]

On the basis of the foregoing provisions establishing an accused's fundamental rights to liberty, all persons in custody are entitled to bail as a matter of right.[10] Such right is absolute.[11] However, when a person is in custody for an offense punishable by the penalty of death, *reclusion perpetua*, or life imprisonment, and when the evidence of guilt is strong, bail is not a matter of right.[12] Rule 114, Section 7 of the Revised Rules of Criminal Procedure provides that "[n]o person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the state of the criminal prosecution."[13] Bail may also become discretionary upon the court after conviction for certain offenses.[14]

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4. *Id.* art. 27.
5. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 114, § 6.
6. PHIL. CONST. art. 3, § 19, ¶ 1. This Section provides that "[n]either shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*." *Id.*
7. An Act Prohibiting the Imposition of Death Penalty in the Philippines, Republic Act No. 9346, § 1 (2006).
8. *Id.* § 2.
9. PHIL. CONST. art. III, § 1.
10. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 114, § 4.
11. *Id.*
12. *Id.* § 7.
13. *Id.*
14. *Id.* § 5.

This Article will attempt to present the environment of criminal litigation as it is found in actual practice. This Article will cover the problems confronting the Defense, such as when the accused or criminal defendant, together with the defense counsel, are faced with a case where the prosecutor does not recommend bail because the indictment is for a capital offense. In this Article, the Author presents five cases, analyzes them to illustrate the subject, and finally makes proposals or recommendations. Following the rule on *sub judice*[15] and because the cases included in this work are actual cases which are either already resolved, or still pending, certain details like the names of the parties and other material information which may identify them will not be disclosed for their protection.

II. THE PARRICIDE DEFENDANT

Sometime in 2001, a young wife and mother of two boys below seven years of age was charged with killing her husband with a .45 caliber automatic pistol in a Northern Mindanao city. One quiet, early dawn, a thump was heard by the housemaid in the living room of the conjugal house. When she went out to the living room to observe, she found her male employer lying back on a chair with a wound on his forehead, apparently dead. A pistol was lying on the floor below his right hand, while the magazine clip was lying on the other side below his left hand.

Initial police investigation indicated suicide as the cause of death. The attending physician at the emergency room observed powder burns on the web between the thumb and index finger of the deceased's right hand. However, the police investigators had to stop their investigation upon the request of the mother of the deceased, and also because of the lack of technical capability to go further. After a month, a doctor who was a friend of the mother gave his personal observation that the death was not a case of suicide. This led the mother to go to the local National Bureau of Investigation (NBI) office for further investigative work. The NBI pursued the investigation. However, the NBI investigation did not yield any new evidence. Despite the lack of new evidence, the NBI nevertheless filed a complaint for Reckless Imprudence Resulting to Parricide[16] with the Office of the City Prosecutor against the victim's wife. Without supporting

15. *See* Lejano v. People, 638 SCRA 104, 192–94 (2010) (J. Brion, supplemental opinion). The *sub judice* rule essentially

> restricts comments and disclosures pertaining to pending judicial proceedings. The restriction applies not only to participants in the pending case ... but also to the public in general[.] ... [The rule is] necessary in order to ensure the proper administration of justice and the right of an accused to a fair trial.

Id.

16. REVISED PENAL CODE, art. 365.

evidence to warrant probable cause, and without her having participated in the Preliminary Investigation[17] because the subpoena was misdirected, the Investigating Prosecutor nevertheless indicted the surviving spouse for Parricide.[18] No bail was recommended.

The accused had initially sought relief from the appellate courts but failed. After three years of hiding, the accused voluntarily surrendered and applied for bail. Although she did not kill her husband, and there was practically no incriminating evidence against her, the wife had to hide just the same. The reason was simple. The wife felt the need to hide her children. If she faced the prosecution at the outset, she ran the risk of losing her children because once incarcerated, the children would naturally go with their paternal grandmother. If this happened, the accused would not have only lost her husband but her two children as well. The accused and her mother-in-law did not have a smooth relationship.

The court ordered that the accused be placed under NBI custody and immediately ordered the Prosecution to present evidence. Summary bail hearings were called and completed within a week. Finding no strong evidence to deny bail, the trial court fixed bail at ₱100,000.00, which the accused immediately paid. Thus, she was set free from pre-trial detention. Subsequently, the case continued on to trial with presentation of additional evidence. After the Prosecution rested its case, the Defense moved for dismissal through a demurrer to evidence. The court granted the motion and accordingly dismissed the case.

To the Author's mind, the *Parricide Defendant* case displayed the correct and ideal procedure, one which respected and upheld the accused's right to liberty,[19] right to bail,[20] and right to speedy trial and disposition of her case,[21] consistent with the Constitutional, statutory, and procedural mandates.[22]

In sharp contrast, the following cases characterize what should not be, or what should not have happened at all. They exemplify a mortal sin in criminal litigation. They portray the sad state of criminal litigation where the right to liberty is at stake,[23] but is not given serious consideration. The

17. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112.

18. REVISED PENAL CODE, art. 246.

19. PHIL. CONST. art. 3, § 1.

20. PHIL. CONST. art. 3, § 13.

21. PHIL. CONST. art. 3, § 16.

22. *See* PHIL. CONST. art. 3; An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 32 (1950); & 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 114.

23. PHIL. CONST. art. 3, § 1.

following cases all amount to gross violation of the accused's right to liberty,[24] right to bail,[25] and right to speedy trial and case disposition.[26]

III. The Kidnapping for Ransom

A Muslim police officer together with his co-accused were indicted for Kidnapping and Serious Illegal Detention[27] committed against a Muslim businessman. Upon his arrest, the accused police officer applied for bail. The court called for bail hearings which lasted for more than a year with the Prosecution calling about five witnesses to prove that the evidence of guilt is strong. In the course of the lengthy bail hearings, the parties agreed to convert the bail hearings into the trial of the main case, and to adopt the evidence presented so far as the Prosecution's evidence for the main case. The Prosecution completed its presentation of evidence and rested. The Defense took its turn to present its evidence. After trial, the court convicted the accused.

IV. The Countryside Representative

A female Countryside Representative of a recruitment company in Mindanao was arrested in 2006 on charges of Illegal Recruitment Committed by Syndicate and in Large Scale[28] with no recommendation for bail. The accused's work only involved interviewing prospective applicants outside of Manila, which explained her designation as Countryside Representative. There were about 10 complainants. Section 6 of the Migrant Workers and Overseas Filipinos Act of 1995 provides that when juridical persons are involved in illegal recruitment, "*the officers having control,*

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24. PHIL. CONST. art. 3, § 1.

25. PHIL. CONST. art. 3, § 13.

26. PHIL. CONST. art. 3, § 16.

27. REVISED PENAL CODE, art. 267.

28. An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes [Migrant Workers and Overseas Filipinos Act of 1995], Republic Act No. 8042, §§ 6 & 7 (1995). These Sections essentially provide —

> Illegal recruitment when committed by a syndicate or in large scale shall be considered as [an] offense involving economic sabotage
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> ...
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> The penalty of life imprisonment and a fine of not less than [₱500,000.00] nor more than [₱1,000,000.00] shall be imposed if the illegal recruitment constitutes economic sabotage as defined herein.

Id. §§ 6 (m) & 7 (b).

management[,] or direction of their business shall be liable."[29] Although the charge was, on its face, dismissible, because the accused had no legal liability, not being an officer having control, management, or direction of the company's business, the Defense did not expect the court to be bold enough to grant immediate dismissal. Hence, the Defense resorted in the meantime to an application for bail, if only to get the accused out of pre-trial detention. The court ordered the Prosecution to present evidence to justify the denial of bail.

For the next two years, and over the constant and standing objection of the Defense, the Prosecution called to the witness stand practically all the private offended parties. After two years of bail hearings, the court eventually denied bail. The Prosecution rested and the Defense started to present evidence. As of this writing, the case is still pending. Meanwhile, the accused has contracted tuberculosis while under pre-trial detention.

V. THE BANK MANAGER

A female Bank Manager was charged and subsequently indicted on four counts of Qualified Theft[30] involving more than ₱5,000,000.00. No bail was recommended. Immediately upon her arrest, the Bank Manager applied for bail. However, the court did not act on it. When the accused changed her defense team, her new counsel pursued the application for bail and moved for bail hearings once more. After no less than 10 motions spread throughout a year, urging the court to schedule bail hearings, the court finally decided to call for the hearings. However, none could be scheduled immediately due to the court's tight schedule and heavy caseload. To date, or after three years from her arrest, the accused is still in jail. The Prosecution has completed the direct examination of its first witness for the bail hearings, with unnecessary delays in between. The court wherein the case is pending schedules criminal cases only once a week, with about 50 cases scheduled per day. According to the Prosecution, it will call at least two more witnesses for the bail hearings.

VI. THE DRUG DEFENDANT

The accused in this case was arrested during an alleged buy-bust operation for sale and possession of marijuana.[31] He was subjected to inquest and was indicted for violating Sections 5 and 11 of the Comprehensive Dangerous Drugs Act of 2002.[32] No bail was recommended for the Section 5

29. *Id.* § 6 (emphasis supplied).

30. REVISED PENAL CODE, art. 310.

31. *See* People v. Dela Rosa, 640 SCRA 635, 640 (2011).

32. An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes

indictment.[33] The Defense immediately applied for bail, and simultaneously filed a motion to suppress evidence. After a year of Prosecution-initiated postponements, the Prosecution's first witness, the police officer who acted as an alleged poseur buyer, took to the stand and completed his direct

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[Comprehensive Dangerous Drugs Act of 2002], Republic Act No. 9165, §§ 5 & 11 (2002).

33. *Id.* § 5. This Section provides —

> Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution*[,] *and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from [₱500,000.00] to [₱10,000,000.00] shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute[,] dispatch in transit[,] or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.
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> The penalty of imprisonment ranging from [12] years and one day to [20] years and a fine ranging from [₱100,000.00] to [₱500,000.00] shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit[,] or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.
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> If the sale, trading, administration, dispensation, delivery, distribution[,] or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within 100 meters from [a] school, the maximum penalty shall be imposed in every case.
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> For drug pushers who use minors or mentally incapacitated individuals as runners, couriers[,] and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.
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> If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.
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> The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages[,] or acts as a 'financier' of any of the illegal activities prescribed in this Section.
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> The penalty of 12 years and one day to 20 years of imprisonment and a fine ranging from [₱100,000.00] to [₱500,000.00] shall be imposed upon any person, who acts as a 'protector/coddler' of any violator of the provisions under this Section.

Id.

testimony. Like in the *Bank Manager* case, this Drug Court could hear a particular case only once a week, with about 50 cases scheduled per court session. The hearings are scheduled in the afternoon, and may at times last until 6:00 PM.

VII. ANALYSIS

Regrettably, of the five cases illustrated above, it is only the *Parricide Defendant* case which is able to uphold the Constitutional, statutory, and procedural rights to liberty, bail, and speedy trial and case disposition. The rest of the cases, namely: (a) *The Kidnapping for Ransom*; (b) *The Countryside Representative*; (c) *The Bank Manager*; and (d) *The Drug Defendant*, are deplorable instances of gross violation of the above mentioned rights. They clearly fall below the standards set by the laws as regards the rights of the accused. Why?

In the *Kidnapping for Ransom* case, the court lost control of the bail proceedings. The court appeared intimidated by the belligerent attitude of the respective supporters from each side, who seemed more like private "armies" than mere spectators. In fact, in some instances, the court hearings had to be suspended because of the violent physical altercations between such supporters outside the courtroom which allegedly disrupted the proceedings taking place inside. The hearings even saw witnesses who were accompanied by NBI escorts while testifying on the stand.

The Defense was also distracted by the violent behavior of the parties' respective followers outside the court, seemingly shifting their focus from the proper handling or management of the defense strategy in the case. The Defense thus apparently failed to press for the accused's right to bail and the speedy disposition of his bail application. In other words, the Defense should have constantly moved for the court to speed up the bail hearings, instead of allowing the court to unnecessarily concentrate on the security aspect of the proceeding. Needless to state that the security of both the witnesses and the court are important, but it must be noted that the accused's right to bail, which is imbedded in his or her fundamental right to liberty, is equally as important, if not more paramount, than the security issue.

As previously stated, the Defense should have moved the speedy resolution of the bail application.[34] To the Author's mind, the Defense

34. Serapio v. Sandiganbayan, 396 SCRA 443, 477-78 (2003). The importance and indispensability of the speedy resolution of bail application was explained by the Court as follows —

> [F]or, if there were any mode short of confinement which would with reasonable certainty insure the attendance of the accused to answer the accusation, it would not be justifiable to inflict upon him that indignity, when the effect is to subject him in a greater or lesser

committed an irreversible error when it allowed the court to convert the bail hearings into the main trial itself without first asking for a ruling on the bail application. The correct scenario would have been for the Defense to move for a ruling on the bail petition first after the Prosecution had rested its case for purposes of the bail hearings, before allowing the court to consider the evidence so far adduced as the same evidence for the main case. Of course, the Rules of Court provide that in criminal proceedings, the procedure is that the evidence presented during the bail hearings is automatically reproduced during the trial proper.[35] However, it does not mean that the Prosecution's bail hearing evidence is automatically converted as the evidence in the main case, with the bail application being pushed to the wayside.[36] A decision on the bail application must be made first. In fact, the Supreme Court has previously allowed the remedy of *mandamus* to lie against a judge who would not decide on an application for bail.[37] Further, the Defense should also be allowed to present its own rebuttal evidence, if any, during the bail hearings.[38]

What happened in the *Kidnapping for Ransom* case was that the Defense lost its opportunity to challenge the Prosecution's evidence — not only with regard the strength of the evidence of guilt asserted during the bail hearings, but also with regard to what eventually ended up being the evidence of the main case. First, the Defense could have presented rebuttal evidence after the

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degree, to the punishment of a guilty person, while as yet it is not determined that he has not committed any crime.

Id.

35. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 114, § 8. This Section provides —

> Section 8. *Burden of proof in bail application.* — At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, *reclusion perpetua*, or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial, but upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify.

Id.

36. *Id.*

37. Montalbo v. Santamaria, 54 Phil. 955, 962-64 (1930).

38. *See* People v. Bocar, 27 SCRA 512, 514-15 (1969). In this case, a student accused of murder had applied for bail. During the hearing, he was able to present an exam paper as evidence of him being at school at the time the crime had allegedly taken place, weakening the prosecution's case against him. His application for bail was granted. *Id.*

Prosecution rested their case during the bail hearings in order to show that the evidence of guilt adduced by the Prosecution was not strong enough to overcome the accused's right to bail,[39] and also for the court to rule favorably on the bail petition.[40] Second, in the event that the court ruled that the evidence of guilt was indeed strong and consequently denied the bail petition, the Defense could have gone up to the Court of Appeals (CA) on a Rule 65 petition for *certiorari*[41] if it did not agree with the order denying bail. Third, after the Prosecution rested its case during the trial proper, the Defense should have moved for dismissal by filing a demurrer to evidence.[42] Instead, what the Defense did was to pursue the main case and present controverting evidence, effectively pushing the petition for bail further from the court's line of sight.

In the *Countryside Representative* case, on the other hand, the court erred in allowing the Prosecution to present most, if not all, of the complaining

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39. PHIL. CONST. art. 3, § 13.

40. *See* 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 119, § 11 & People v. Padero, 226 SCRA 810, 818-19 (1993). The *Padero* case provides —

> The function of the presentation of rebuttal evidence is to explain, repel, counteract, or disprove the evidence of the adversary. This is done in order 'to meet the new facts put in by the opponent in his case in reply[,]' and is 'necessary only because, on a plea in denial, new subordinate evidential facts have been offered, or because, on an affirmative plea, its substantive facts have been put forward, or because, on any issue whatever, facts discrediting the proponent's witnesses have been offered.'

Padero, 226 SCRA at 819.

41. 1997 RULES OF CIVIL PROCEDURE, rule 65, § 1. This Section provides —

> Section 1. *Petition for certiorari.* — When any tribunal, board[,] or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his [or her] jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board[,] or officer, and granting such incidental reliefs as law and justice may require.
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> The petition shall be accompanied by a certified true copy of the judgment, order[,] or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Id.

42. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 119, § 23.

witnesses to the court, if only to prove that the evidence of the accused's guilt was strong enough to deny her bail. In fairness to the Defense, it constantly objected to the Prosecution's actions. According to the Defense, and this is supported by authorities,[43] if indeed the accused's evidence of guilt is strong, the Prosecution need not call all its witnesses to the witness stand.[44] One, or perhaps two at the most, would have sufficed to prove that the evidence of guilt was strong enough for the purpose of denying the bail application.[45]

The crime of Illegal Recruitment[46] in large scale[47] has three essential elements, namely:

(1) "[T]he person charged undertook a recruitment activity under Article 13 (b) or any prohibited practice under Article 34 of the Labor Code;"[48]

(2) "[The] accused did not have the license or the authority to lawfully engage in the recruitment and placement of workers;"[49] and

(3) "[The] accused committed the same against three or more persons individually or as a group."[50]

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43. *See* Go v. Court of Appeals, 221 SCRA 397, 414-15 (1993) (citing Ocampo v. Bernabe, 77 Phil. 55, 62 (1946)).

44. *Id.*

45. *Id.*

46. A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development, and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, arts. 13 (b) & 38 (a) (1974). Article 13 (b) defines "recruitment and placement" as —

> [A]ny act of canvassing, enlisting, contracting, transporting, utilizing, hiring[,] or procuring workers, and includes referrals, contract services, promising[,] or advertising for employment, locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

Id. art. 13 (b). Article 38 (a) on the other hand, states that recruitment is illegal when "prohibited practices enumerated under Article 34 of [the Labor] Code [are] undertaken by non-licensees or non-holders of authority[.]" *Id.* art. 38 (a).

47. *Id.* art. 38 (b), ¶ 2.

48. People v. Jamilosa, 512 SCRA 340, 351 (2007).

49. *Id.*

50. *Id.*

To commit syndicated illegal recruitment,[51] three elements must be established:

(1) "[T]he offender undertakes either any activity within the meaning of 'recruitment and placement' defined under Article 13 (b), or any of the prohibited practices enumerated under Art[icle] 34 of the Labor Code;"[52]

(2) "[The offender] has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers;"[53] and

(3) "The illegal recruitment is committed by a group of three [ ] or more persons conspiring or confederating with one another."[54]

Furthermore, the Labor Code also states that when illegal recruitment is committed by a syndicate or in large scale, it is considered an offense involving economic sabotage.[55]

Each of the above mentioned crimes have only three elements. By way of practical analysis, in order to prove before a judge that the evidence of guilt is strong, at least for the purpose of denying a bail application, the Prosecution did not need to present all 10 complaining witnesses. A lesser number could just have easily testified to the acts of recruitment committed (the first element), and that it was committed by three or more persons (the third element, in the case of syndicated illegal recruitment). For large scale illegal recruitment, the Prosecution could have simply produced three witnesses to testify to prove the third element. Finally, the fact of being unlicensed could have been proved (for bail application purposes) with documentary evidence, requiring less time, than having a witness testify. By producing all 10 witnesses during the bail hearings, the Prosecution needlessly went beyond what was needed, treating the bail proceeding as the main trial and forcing the accused to spend a longer time under pre-trial detention.

In the *Countryside Representative* case, the Defense raised a standing objection against the Prosecution calling all its listed as well as some unlisted

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51. LABOR CODE, art. 38 (b), ¶ 2. The Code provides that the crime of illegal recruitment "is deemed committed by a syndicate if carried out by a group of three [ ] or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise[,] or scheme defined under the first paragraph hereof." *Id.*

52. People v. Gallo, 622 SCRA 439, 451 (2010).

53. *Id.* (citing People v. Soliven, 366 SCRA 508, (2001)).

54. *Gallo*, 622 SCRA at 451 (citing Migrant Workers and Overseas Filipinos Act of 1995, § 6).

55. *Gallo*, 622 SCRA at 451.

witnesses because it was unnecessarily delaying the bail hearings. Almost halfway through the bail hearings, the Defense also moved the court to stop the presentation of further evidence, which the court has authority to do under Rule 133, Section 6 of the Revised Rules of Criminal Procedure.[56] Unfortunately, the court was unmoved. Outside of court, the Presiding Judge was quoted as saying that in view of the number of complaining witnesses, he felt hesitant to rule favorably on the application for bail. He added that it may expose him to possible flak from local public opinion and media[57] because of the number of complaining witnesses.

Sensing that the bail hearings were going nowhere, the Defense in the *Countryside Representative* case moved to quash on the ground that the facts charged did not constitute an offense under Rule 117 of the Revised Rules of Criminal Procedure.[58] In support of its motion, the Defense argued that the accused is not the individual contemplated by the law to be liable because the alleged illegal recruitment was committed by a juridical person, in which case the persons liable are the officers having control, management, or direction of the company's business, of which the accused was not.[59] The court denied dismissal and continued with the bail hearings.

A common allegation made by the complaining witnesses in the *Countryside Representative* case was that it was the accused who collected the recruitment fees from them, and after they complained for failure of the recruitment agency to deploy them, it was the same accused who signed the checks which her company issued to the complainants as the refund of the recruitment fees they paid. The checks bounced upon presentment. However, during the bail hearings, the Defense succeeded in obtaining admissions from the Prosecution's witnesses, that: (a) the alleged amounts collected by the accused were actually deposited by the complaining witnesses online to the bank account under the name of the recruitment agency, as shown by the bank deposit slips presented by the Prosecution as documentary evidence; and (b) the bounced checks which represented the recruitment agency's refund of the fees paid by the applicants were not signed by accused. Despite all these valid grounds for dismissing the case as

56. REVISED RULES ON EVIDENCE, rule 133, § 6. This Section provides that "[t]he court may stop the introduction of further testimony upon any particular point when the evidence upon it is already so full that more witnesses to the same point cannot be reasonably expected to be additionally persuasive." *Id.*

57. The Judge said, "baka *ma*-Bombo *tayo*." Meaning, they may be broadcast over Bombo Radyo, a local news radio station.

58. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 117, § 3 (a). This Section provides that "[t]he accused may move to quash the complaint or information" on the ground "that the facts charged do not constitute and offense." *Id.*

59. Migrant Workers and Overseas Filipinos Act of 1995, § 6.

against the detained accused, the court continued with the bail hearings, eventually denied the grant of bail, and ordered the Defense to present its evidence. Like the *Kidnapping for Ransom* case, the Defense failed to file a demurrer to evidence[60] during the trial proper, thereby rendering unavailable the possibility of provisional liberty for the accused.

With the exception of *Parricide Defendant*, the trial court did not call summary bail hearings in the rest of the cases mentioned in this Article. In *Bank Manager*, the court's excuse was that it was overloaded with approximately 4,000 cases. This probably explains why there were about 50 cases calendared for each trial date. The Defense requested the Branch Clerk of Court (BCC) to schedule the bail hearings in close proximity to each other, but the BCC said that there were too many cases, and the bail hearings could only be scheduled once every month, together with the rest of the other cases, whether they be for arraignment,[61] pre-trial conference,[62] or trial.[63] In other words, the court treated the bail matter like any other ordinary step in criminal procedure, scheduling it together with the other cases at "normal" intervals, rather than in close succession.

After two years of waiting for the bail hearings, the Prosecution finally called a witness to testify and prove that the evidence of guilt against the accused bank manager for all four counts of Qualified Theft was strong. As expected, the witness could not complete her testimony in one sitting with more than 30 exhibits to identify. However, during the first hearing, all that the witness did was to identify the exhibits as the private prosecutor showed them to her, one by one. She did not have personal knowledge of the material and relevant facts constituting the felony charged because the witness only assumed the position left by the accused as bank manager. Therefore, her knowledge of whatever material and relevant facts was limited to the period after she took over the accused's position. The witness was also not part of the investigation or the audit team which investigated the alleged unlawful taking by the accused. In short, the Prosecution's first witness was an incompetent witness, rendering her testimony as inadmissible hearsay.[64]

Naturally, the Defense moved to disqualify the Prosecution's witness, but the court refused to do so. The Defense was thus forced to participate in

60. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 119, § 23.

61. *Id.* rule 116.

62. *Id.* rule 118.

63. *Id.* rule 119.

64. REVISED RULES ON EVIDENCE, rule 130, § 36. This Section provides that "[a] witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these [R]ules." *Id.*

the bail hearings. As expected, in light of the trial court's heavy caseload, the unavailability not only of the public prosecutor and the private prosecutor, but also of their witness, dragged the bail hearings for over a year. In one year, there were only four bail hearings. The Prosecution had to move for postponement when the witness, among other things, attended the graduation of a child, and lost her voice. The Prosecution also did so at times without even complying with the requirements under Rule 30, Section 4 of the Rules of Court.[65] Over the series of objections raised by the Defense and thus making such objections continuing, the trial court allowed the Prosecution to proceed.

Lastly, in *Drug Defendant*, the Defense also moved for admission to bail immediately upon the accused's arrest as a result of an alleged buy-bust operation. This was an expected remedy for the Defense considering the type of case. Like in *Bank Manager*, the Drug Court[66] had a very heavy caseload. The court scheduled trials during a designated day of the week only. Bail hearings did not commence until about a year from the filing of the application for bail. The bail hearings also dragged on for over a year.

In *Drug Defendant*, the defense was that the accused was framed. The accused in the case neither sold nor possessed marijuana during the date, or at the time and place alleged in the Information. He may have used drugs on some other occasion, but it was most definitely not at the particular instance for which he was indicted. The brother of the purported police informant was arrested for pushing illegal drugs to students earlier in the same day that the accused was arrested. In order to free his brother, the informant had to find another person to turn in, and this person turned out to be the accused. This practice is known as *palit-ulo* in drug-related police operations.[67]

Based on initial evidence presented by the arresting police officers during the inquest, it was found that they did not comply with the requirements prescribed under Section 21 of the Comprehensive Dangerous Drugs Act of 2002.[68] Specifically, the arresting officers did not immediately

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65. 1997 RULES OF CIVIL PROCEDURE, rule 30, § 4. This Section states that —

> A motion to postpone a trial on the ground of illness of a party or counsel may be granted if it appears upon affidavit or sworn certification that the presence of such party or counsel at the trial is indispensable and that the character of his illness is such as to render his non-attendance excusable.

Id.

66. Comprehensive Dangerous Drugs Act of 2002, art. 11, § 90.

67. *See* People v. Mapa, 220 SCRA 670, 679 (1993).

68. Comprehensive Dangerous Drugs Act of 2002, art. 2, § 21, ¶ 1. This Section provides that —

make a physical inventory and take a photograph of the seized drugs in the presence of a representative from the media and the Department of Justice (DOJ) and any elected official who should sign the inventory.[69] Under a long line of decisions, the Supreme Court had reversed the judgment of conviction and accordingly dismissed the charge when the arresting peace officers failed to comply with the mandate of Section 21.[70] Consequently, the indictment of the accused under Section 5[71] should have been immediately dismissed following existing jurisprudence on Section 21.[72] The

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> SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The [Philippine Drug Enforcement Agency (PDEA)] shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors[,] and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized[,] and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice [(DOJ)], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

Id.

69. *Id.*

70. *See, e.g.*, People v. Pagaduan, 627 SCRA 308, 316 (2010); People v. Garcia, 580 SCRA 259, 265 (2009); & People v. Denoman, 596 SCRA 257, 276 (2009).

71. Comprehensive Dangerous Drugs Act of 2002, art. 2, § 5.

72. *But see* People v. Alviz, 690 SCRA 61, 77 (2013); People v. Hong Yen E, 688 SCRA 309, 316 (2013); People v. Musa, 684 SCRA 622, 639-41 (2012); & People v. Amarillo, 678 SCRA 568, 577-79 (2012). These cases show that the Supreme Court has considered non-compliance with the inventory requirements under Sec. 21 as not fatal to the Prosecution's case, in the absence of any other form of irregularity, and for as long as they are able to establish the chain of custody and integrity of the seized evidence. *See also* People of the Philippines v. Romeo Oniza y Ong and Mercy Oniza y Cabarle, G.R. No. 202709, July 3, 2013, *available at* http://sc.judiciary.gov.ph/jurisprudence/2013/july2013/202709.pdf (last accessed Sep. 12, 2013). This case carves out when strict compliance with Sec. 21 is not fatal, namely "(a) there must be justifiable grounds for non-compliance with the procedures; and (b) the integrity and evidentiary value of the seized items are properly preserved." *Id. See also* LEONOR D. BOADO, NOTES AND CASES ON SPECIAL PENAL LAWS 526-31 (2011 ed.).

Defense saw no point for the court to proceed any further with the prosecution of the accused if in the end the case would be dismissed for non-compliance with the procedure under Section 21.[73]

After examining all the foregoing illustrations where the proceedings for bail were not conducted in a summary manner as required by law and jurisprudence, the Author asks this question: Who was at fault?

In all the four cases cited, namely, the (a) *Kidnapping for Ransom*; (b) *Countryside Representative*; (c) *Bank Manager*; and (d) *Drug Defendant*, the quick answer is that fault lies with the court. In *Kidnapping for Ransom*, the court erred in converting the bail hearings to the trial proper without first making a ruling on the bail application. In *Countryside Representative*, the court erred in allowing the Prosecution to call all their witnesses for the purpose of determining whether bail should be granted or not. In addition, the accused was not even legally liable in the first place. In *Bank Manager*, the court erred in allowing the Prosecution's witness to testify when she was obviously an incompetent witness for lack of personal knowledge of the facts allegedly constituting the felony charged. Lastly, in *Drug Defendant*, the court erred in not dismissing the cases outright for failure of the arresting peace officers to comply with the requirements of Section 21.[74] Needless to state, the common denominator among all these cases is the court's fault in allowing the bail hearings to drag and last for over a year at the shortest.

The 1946 case of *Ocampo v. Bernabe*[75] set the standard for the conduct of bail proceedings.[76] This standard was cited in the 1993 case of *Go v. Court of Appeals*[77] where the Court stated that

> the hearing of an application for bail should be summary or otherwise in the discretion of the court. By 'summary hearing' [is] meant such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing[,] which is merely to determine the weight of the evidence for the purpose of bail. In such a hearing, the court 'does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered is admitted.' ... The course of the inquiry may be left to the discretion of the court which may confine itself to receiving such evidence as has reference to substantial matters avoiding unnecessary thoroughness in the examination and cross-examination of witnesses and reducing to a reasonable minimum the

73. Comprehensive Dangerous Drugs Act of 2002, art. 2, § 21.

74. *Id.*

75. Ocampo v. Bernabe, 77 Phil. 55 (1946).

76. *Id.* at 62.

77. *Go*, 221 SCRA at 397.

> amount of corroboration particularly on details that are not essential to the purpose of the hearing.[78]

Subsequent pronouncements emphasizing the summary nature of bail proceedings were made in *Guillermo v. Reyes, Jr.*[79] which held, thus —

> A hearing, in the nature of a summary proceeding entailing judicial determination[,] is required where the grant of bail is addressed to the discretion of the court. The [P]rosecution should be given the opportunity to adduce evidence thereat[,] after which the court should then spell out at least a summary or resume of the evidence on which the order, whether it be affirmative or negative, is based. Otherwise, the order is defective or voidable.[80]

In 1971, the issue of whether or not the Prosecution may call as many witnesses as they deemed necessary for the purpose of resisting the accused's application for bail arose.[81] The Supreme Court resolved the issue in *Siazon v. The Presiding Judge of the Circuit Criminal Court, 16th Judicial District, Davao City.*[82] For a better understanding of the ruling, substantial portions of the relevant decision are cited below, to wit —

> The petitioner charges the respondent [c]ourt with having gravely abused its discretion in interfering with what he submits is the right of the prosecution to present as many witnesses as it considers necessary, and in the order it chooses to do so, in order to show that the evidence of the guilt of the accused is strong, in support of its opposition to their petition for bail. Specifically, the petitioner states that aside from the 27 prosecution witnesses he had already presented over a period of three months since the hearing on the petition for bail started on [2 July 1971], he intends to present many more — some 13 of them — before he calls Angelico Najar to the stand; and that since the testimonies of all these 40 witnesses are circumstantial and corroborative in nature and are intended to establish a basis for the testimony to be given by Angelico Najar, who is the only one who can testify directly as to the connection of the accused to the offenses charged, all the said witnesses should be presented before Najar himself is called.
>
> The issue, as stated by the respondent [c]ourt in the order now sought to be set aside, is 'whether or not a proceeding in an application for bail is still summary in nature as it was under the old rule ... and whether or not the court has the power to limit, in the exercise of wise discretion, the number of witnesses to be presented if in its judgment it can foresee that said right

78. *Id.* at 414-15 (citing *Ocampo*, 77 Phil. at 62).

79. Guillermo v. Reyes, Jr., 240 SCRA 154 (1995).

80. *Id.* at 159 (citing Carpio v. Maglalang, 196 SCRA 41, 50 (1991)).

81. Siazon v. The Presiding Judge of the Circuit Criminal Court, 16th Judicial District, Davao City, 42 SCRA 184, 187 (1971).

82. *Id.* at 190.

> to bail may be defeated due to an unnecessary delay in the presentation of witnesses showing strong evidence of guilt."
>
> The respondent Judge in effect ruled on both questions in the affirmative. The petitioner contends that the ruling is erroneous and constitutes a grave abuse of discretion in this case.
>
> As a general proposition, all persons shall before conviction be bailable except when the charge is a capital offense and the evidence of guilt is strong. At the hearing of the application for bail the burden of showing that the case falls within the exception is on the prosecution, according to Section 7, Rule 114 of the Rules of Court. The determination of whether or not the evidence of guilt is strong is a matter of judicial discretion, which in the very nature of things may rightly be exercised only after the evidence is submitted to the court at the hearing. Neither under the old nor under the new Rules is there any specific provision defining what kind of hearing it should be, but in [*Herras Teehankee v. Director of Prisons & Ocampo v. Bernabe,*] ... it was stated that the hearing should be summary or otherwise in the discretion of the court. By summary hearing, this Court added, 'we mean such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is merely to determine the weight of the evidence for purposes of bail. On such hearing, the court does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted.' The course of the inquiry may be left to the discretion of the court which may confine itself to receiving such evidence as has reference to substantial matters, avoiding unnecessary thoroughness in the examination and cross-examination of witnesses and reducing to a reasonable minimum at the amount of corroboration particularly on details that are not essential to the purposes of the hearing.[83]

In the 2007 case of *Santos v. How*,[84] the Court declared that the discretion exercised by the trial court in bail proceedings is not unlimited.[85] In the case, the Office of the Court Administrator made the following recommendation and evaluation, to wit —

> It is true that the weight of the evidence adduced is addressed to the sound discretion of the court. However, such discretion may be exercised only after the hearing called to ascertain the degree of guilt of the accused for the purpose of determining whether or not he should be granted provisional liberty. At the hearing, the court should assure that the [P]rosecution is afforded the opportunity to adduce evidence relevant to

83. *Siazon*, 42 SCRA at 187-89 (citing 1935 PHIL. CONST. art. III, § 1, ¶ 16; 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 114, § 7; Herras Teehankee v. Director of Prisons, 76 Phil. 756, 770 (1946); & *Ocampo*, 77 Phil. at 58 & 60).

84. Santos v. How, 513 SCRA 25 (2007).

85. *Id.* at 34.

> the factual issue, with the applicant having the right of cross-examination and to introduce his [or her] own evidence in rebuttal. Both the [P]rosecution and the [D]efense must be given reasonable opportunity to prove, in the case of the [P]rosecution, that evidence of guilt of the applicant is strong; and, in the case of the [D]efense, that such evidence of guilt is not strong. The accused has the right to cross-examine the witnesses presented by the [P]rosecution and to introduce his evidence in rebuttal to establish his right to bail.
>
> In fine, the hearing is for the purpose of enabling the court to exercise sound discretion as to whether or not under the Constitution and laws in force the accused is entitled to provisional release on bail. At the hearing, the petitioner can rightfully cross examine the witnesses presented by the prosecution and introduce his own evidence in rebuttal.[86]

Lastly, in *Basco v. Rapatalo*,[87] the Court discussed entire gamut of relevant guidelines, based on earlier jurisprudence, in bail proceedings.[88] While *Basco* involved the failure of the trial judge to call bail hearings, as in many other cases before it, the opinion clearly sets forth the duties of the judge in a bail proceeding.[89] The Court also said that

> when the grant of bail is discretionary, the [P]rosecution has the burden of showing that the evidence of guilt against the accused is strong. However, the determination of whether or not the evidence of guilt is strong, being a matter of judicial discretion, remains with the judge. 'This discretion by the very nature of things may rightly be exercised only after the evidence is submitted to the court at the hearing. Since the discretion is directed to the weight of the evidence and since evidence cannot properly be weighed if not duly exhibited or produced before the court, it is obvious that a proper

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86. *Id.* at 30-31.

87. Basco v. Rapatalo, 269 SCRA 220 (1997).

88. *Id.* at 227-44.

89. *Id.* at 243-44 (citing 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 114, §§ 7, 8, & 18; & Baylon v. Sison, 243 SCRA 284, 295 (1995)). The duties of the judge in a bail proceeding are:

> (1) Notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation;
>
> (2) 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 evidence of 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 bailbond. Otherwise, petition should be denied.
>
> *Basco*, 269 SCRA at 243-44.

exercise of judicial discretion requires that the evidence of guilt be submitted to the court, the petitioner having the right of cross examination and to introduce his own evidence in rebuttal.'

To be sure, the discretion of the trial court, is not absolute nor beyond control. It must be sound, and exercised within reasonable bounds. Judicial discretion, by its very nature[,] involves the exercise of the judge's individual opinion and the law has wisely provided that its exercise be guided by well-known rules which, while allowing the judge rational latitude for the operation of his own individual views, prevent them from getting out of control. An uncontrolled or uncontrollable discretion on the part of a judge is a misnomer. It is a fallacy. Lord Mansfield, speaking of the discretion to be exercised in granting or denying bail said [that] 'discretion when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by [humor]; it must not be arbitrary, vague[,] and fanciful; but legal and regular.'

Consequently, in the application for bail of a person charged with a capital offense punishable by death, *reclusion perpetua*[,] or life imprisonment, a hearing, whether summary or otherwise in the discretion of the court, must actually be conducted to determine whether or not the evidence of guilt against the accused is strong. 'A summary hearing means such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of hearing which is merely to determine the weight of evidence for the purposes of bail. On such hearing, the court does not sit to try the merits or to enter into any nice inquiry as to the weight that ought to be allowed to the evidence for or against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be therein offered and admitted. The course of inquiry may be left to the discretion of the court which may confine itself to receiving such evidence as has reference to substantial matters, avoiding unnecessary thoroughness in the examination and cross examination.' If a party is denied the opportunity to be heard, there would be a violation of procedural due process.

...

The [P]rosecution under the revised provision is duty bound to present evidence in the bail hearing to prove whether the evidence of guilt of the accused is strong and not merely to oppose the grant of bail to the accused. 'This also prevents the practice in the past wherein a petition for bail was used as a means to force the [P]rosecution into a premature revelation of its evidence and, if it refused to do so, the accused would claim the grant of bail on the ground that the evidence of guilt was not strong.'

It should be stressed at this point, however, that the nature of the hearing in an application for bail must be equated with its purpose i.e., to determine the bailability of the accused. If the [P]rosecution were permitted to conduct a hearing for bail as if it were a full-dress trial on the merits, the purpose of the proceeding, which is to secure the provisional liberty of the accused to enable him to prepare for his [or her] defense,

> could be defeated. At any rate, in case of a summary hearing, the prosecution witnesses could always be recalled at the trial on the merits.[90]

Going back to the examined cases in this Article, in fairness to the courts involved, they did not have a monopoly on the faults committed. The Defense too, committed errors. More appropriately, they omitted to adopt important remedies or strategies for assisting the accused in obtaining provisional liberty. For example, the Defense in *Kidnapping for Ransom* should not have agreed to the conversion of the bail proceedings into the trial on the merits, without pressing first for a ruling on the accused's application for bail. Furthermore, the Defense should have at least considered filing a demurrer of evidence in order to dismiss the case[91] after the Prosecution had rested. This is equally true in *Countryside Representative* where the Defense failed to bring the resolution denying bail up for review on *certiorari*.[92] In the *Bank Manager* and *Drug Defendant* cases, the respective defense teams should have been more aggressive in getting an early ruling on the bail matter or getting a case dismissal.

However, knowing the slow pace of litigation in the country, it makes one wonder whether the remedies which the Defense failed to take in the cases evaluated above would have expedited the resolution of the application for bail in favor of the accused at all. Indeed, the lapses may not have mattered much. On the other hand, had the Defense insisted on close-proximity bail hearings, at least, like in *Parricide Defendant*, the issue would then be how they would have dealt with the heavy caseload of the court and at the same time avoided the temptation of filing an administrative case against the presiding judge for refusing to order continuous bail hearings. In other words, unless the Defense is bent on pursuing the bail matter to its logical end at whatever cost, there seems to be no immediate relief in sight for those accused who are detained, under the present environment of court litigation. Considering that the grant of bail is discretionary in non-bailable offenses,[93] it is highly dependent upon the presiding judge how soon or late he makes a ruling.[94] Either way, the presiding judge should always be guided by the duties laid down by the Supreme Court under existing jurisprudence.[95] Moreover, while the Speedy Trial Act of 1998 allows only a

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90. *Basco*, 269 SCRA at 225-27 & 243 (citing *Ocampo*, 77 Phil. at 58; Crossen v. Rognlie 68 N.W.2d 110, 114 (N.D. 1955) (U.S.); *Siazon*, 42 SCRA at 184 & 189; & 2 FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM 343 (7th ed. 1999)).

91. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 119, § 23.

92. 1997 RULES OF CIVIL PROCEDURE, rule 45.

93. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 114, § 5.

94. *Id.*

95. *See Santos*, 513 SCRA at 34.

30-day period of delay for pre-trial motions which a bail application should fall under,[96] this rule does not seem to be followed in actual practice.

The failure of the judicial system to address the problem confronting the accused who has a pending application for bail for a long period results, wittingly or unwittingly, in the continued pre-trial detention of the accused, as if he were already serving a sentence.

VIII. CONCLUSION

Given the discretionary nature of the accused's right to bail in non-bailable offenses, the progress of the processing of a bail application is highly dependent upon the presiding judge's discretion and initiative.[97] Having such discretion, the presiding judge could order that bail hearings be heard daily or continuously until terminated.[98] Because the accused has the right to speedy trial which the Constitution, statutes, and procedural rules provide,[99] it is evident that there is no reason why the accused should not be entitled to a speedy ruling on his or her bail application in non-bailable offenses. If the Rules of Court prescribe rules on *Habeas Corpus*[100] or a 72-hour Temporary Restraining Order (TRO),[101] which are heard within designated periods, there should also be a given period for an application for bail, considering that it involves the same liberty of a person inquired into by the Writ of *Habeas Corpus*.[102] TROs do not even involve the liberty of an individual, but the hearings are nevertheless prescribed within 72 hours.[103]

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96. An Act to Ensure a Speedy Trial of All Criminal Cases Before the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, and Municipal Circuit Trial Court, Appropriating Funds Therefor, and for Other Purposes [Speedy Trial Act of 1998], Republic Act No. 8493, § 10 (2) (4) (1998). This Section provides that "[the periods of delay are] excluded in computing the time within which trial must commence. [Included in the exclusions are periods of delay resulting from other proceedings concerning the accused, such as] "delay resulting from hearings on pre-trial motions: Provided, That the delay does not exceed 30 days." *Id.*

97. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 114, § 5.

98. *See* WILLARD B. RIANO, CRIMINAL PROCEDURE (THE BAR LECTURES SERIES) 334-37 (2011).

99. *See generally* PHIL. CONST. art. 3, §§ 14 & 16; Speedy Trial Act of 1998; & 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 115 (h).

100. 1997 RULES OF CIVIL PROCEDURE, rule 102.

101. *Id.* rule 58, § 5, ¶ 2.

102. *Id.* rule 102.

103. *Id.* rule 58, § 5, ¶ 2.

Every stakeholder in the administration of justice should reminded of the maxim "justice delayed is justice denied."[104] It is high time that the Supreme Court prescribes a definitive rule which mandates that applications for bail in non-bailable offenses be heard daily or continuously until completed. Alternatively, magistrate judges could be appointed to handle bail matters similar to what they have in the United States.[105]

Until a specific Supreme Court rule is prescribed on how exactly an application for bail should be time-managed in non-bailable offenses, the accused's right to bail in said cases remains an illusion.

104. Thoughts on the Business of Life, *available at* http://thoughts.forbes.com/thoughts/justice-william-e-gladstone-justice-delayed-is (last accessed Sep. 12, 2013). *See also* Tan v. People, 586 SCRA 139, 152 (2009).

105. 28 U.S.C. § 636 (a) (2) (2009) & 18 U.S.C. § 3142 (2011).