

BAIL, WAIVER, and KUMANDER BILOG

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On the fateful day of June 5, 1991, the Supreme Court, in "People of the Philippines vs. Hon. Procoro J. Donato and Rodolfo C. Salas",¹ unanimously denied² the petition for bail of Rodolfo Salas, a.k.a. *Kumander Bilog*. Not that Salas's constitutional right to bail,³ so closely linked to the right to be presumed innocent,⁴ was arbitrarily taken away from him by no less than the highest tribunal in the land. Rather, the Supreme Court made the ultimate finding that Salas had *waived* his right to bail.

The Court held that the facts point to the apparent waiver. Salas and two others, namely Josefina Cruz and Jose Concepcion, were charged with the crime of rebellion⁵ before the Regional Trial Court of Manila. The day after the information was filed relatives of Salas and his co-accused filed a petition for

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¹ G.R. No. 79269.

² Justice Abraham Sarmiento inhibited himself for having been the consultant of the legal defense panel before he joined the Court.

³ PHIL. CONST., Art.III, Sec. 13: "All 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 prescribed by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required. 1985 RULES OF CRIMINAL PROCEDURE, Sec.1, Rule 114: "Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, conditioned upon his appearance before any court as required under the conditions hereinafter specified. Bail may be given in the form of corporate surety, property bond, cash deposit, or recognizance."

⁴ The right to bail is a corollary of a right to be presumed innocent. See 1 J. BERNAS, S.J., *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 359 (1987). Admission to bail gives full fealty to the basic principles of freedom, inherent in our system, that an accused is presumed to be innocent until his guilt is established by evidence beyond reasonable doubt; it reconciles sound administration of justice with the right of the accused to be free from harassment and confinement, unhampered in the preparation of his defense and not subject to punishment prior to conviction. *Dudley vs. United States*, 242 F.2d 656 at 659 (1957), cited in 8 Am.Jur. 2d 784.

⁵ Entitled "People of the Philippines vs. Rodolfo C. Salas, alias Commander Bilog, Josefina Cruz, alias Mrs. Mercado, and Jose Concepcion, alias Eugene Zamora."

habeas corpus⁶ before the Supreme Court.

Pending the habeas corpus proceedings, counsel for petitioners manifested before the Court that an agreement was arrived at with respondents' counsel which necessitated the dismissal of the habeas corpus case. Said agreement involved the following terms: (1) that the petition for habeas corpus will be withdrawn, and Cruz and Concepcion will be immediately released but shall appear at the trial of the criminal case for rebellion under their personal recognizance, (2) that Salas will remain "in legal custody" and "face trial before the court having custody over his person," and (3) that the warrant of arrest for the persons of Cruz and Concepcion will be recalled.

After the Supreme Court dismissed the habeas corpus case, Salas filed a petition for bail. Judge Procoro Donato granted this petition. The People of the Philippines⁷ challenged this order before the Supreme Court by way of certiorari and prohibition. The Supreme Court, through Mr. Justice Davide, set aside the order of Judge Donato. It held that by virtue of the agreement in the habeas corpus case, Salas agreed to "remain in legal custody" and to "face trial before the court having custody over his person". Waiver had already ensued.

INTERMEZZO

The doctrine of waiver is generally applicable to all rights and privileges to which a person is legally entitled, whether secured by contract, conferred by statute, or guaranteed by the Constitution, provided such rights and privileges rest in the individual and are intended for his sole benefit⁸. Insofar as constitutional rights are concerned, the Supreme Court, in *People v. Donato*, enumerated recognized waivers⁹ involving the right against unreasonable searches and seizures,¹⁰ the right to counsel and to remain silent,¹¹ and the right to be

⁶ Entitled "In the Matter of the Petition for Habeas Corpus of Rodolfo Salas, Josefina Cruz, and Jose Milo Concepcion, petitioners, vs. Hon. Juan Ponce Enrile, et.al., respondents".

⁷ Represented by the Chief State Prosecutor of the Department of Justice, the City Fiscal of Manila, and the Judge Advocate General.

⁸ 1 A. TOLENTINO, *CIVIL CODE OF THE PHILIPPINES* 30 (1985).

⁹ June 5, 1991, *Advanced Sheets*, at 30.

¹⁰ *People vs. Malasugui*, 63 Phil. 221 (1936); *de Garcia vs. Locsin*, et.al., 65 Phil. 689 (1938).

¹¹ *People vs. Royo*, 114 SCRA 304 (1982); *Morales vs. Enrile*, 121 SCRA 538 (1983); *People vs. Colana*, 126 SCRA 23 (1983); *People vs. Galit*, 135 SCRA 465 (1985); *People vs. Sanchez*, 132 SCRA 103 (1984); *People vs. Quizon*, 142 SCRA 362 (1986).

heard.¹² So let there be no mistake as to the accepted precept in our jurisdiction -- it is competent for a person to waive a right guaranteed by the Constitution, and to consent to action which would be invalid if taken against his will.¹³

But despite the indubitability of this conclusion one cannot hastily allow *Donato* to join the ranks that comprise the doctrinal whole; at least not without being subjected to the (not necessarily jealous) eye of legal scrutiny. The fact remains that when Mr. Justice Davide and the rest of the Court *en banc* held that (1) the constitutional right to bail may be waived, and that (2) *Kumander Bilog* had waived such a right, we were presented with rulings of first impression.

This commentary will report as to how the Supreme Court arrived at its aforestated findings. Of course it will not leave itself contented with mere narrative. It realizes the fertile ground for discussion which *Donato* provides. It wonders. It asks questions. Consequently, it arrives at a querulous conclusion.

LANDMARK

May the constitutional right to bail be waived? The question is one which only the Supreme Court in *People v. Donato* was poised to answer. And it did so in the affirmative.

The Supreme Court resolved a somewhat related issue in *Muñoz v. Rilloraza*.¹⁴ In that case, Muñoz was charged with treason before the People's Court. No bail was recommended in the information. Muñoz thereafter pleaded not guilty and applied for bail. By agreement of the parties, the court set the bail application and the case on the merits for joint hearing. Upon motion of the defense, the hearing was postponed four times. When the first hearing commenced, Muñoz moved the court to limit such hearing to his application for bail so that he might enjoy provisional liberty pending the trial on the merits. That motion was denied by the court. Muñoz filed a petition for the writ of mandamus to compel the judges of the People's Court to hear and decide his application for bail pending trial on the merits, and for the writ of preliminary injunction to restrain them from continuing the joint hearing. The Supreme Court,

through Mr. Justice Ozaeta, denied this petition when it stated:¹⁵

It is true that the petitioner had the right to apply for bail and to have his application heard summarily and promptly. But that right could be waived, and he did waive it, firstly, by agreeing to a joint hearing and, secondly, by himself asking and consenting to repeated postponements. He therefore cannot be said to have been unlawfully excluded from the use and enjoyment of his right.

Muñoz vs. Rilloraza was the closest we ever got to the concept of waiver of the constitutional right to bail, not until *Donato* came along. But *Muñoz* only laid along the fringes, for the simple reason that in that case there was no right to bail to speak of. Recall that Muñoz was charged with treason. Commonwealth Act No. 682, creating the People's Court so that it may handle treason cases, granted such Court the absolute discretion as to whether or not to grant bail.¹⁶ This is in conformity with a Supreme Court decision on the matter.¹⁷ Hence, for Muñoz's part bail did not exist as a matter of right, but as a matter for the People's Court's discretion. In *Donato*, of course, Salas had the constitutional right to bail.

Despite this outstanding distinction, *Muñoz* still bears a resemblance to *Donato* in the sense that when an accused is entitled to bail as a matter of right, his constitutional right to bail is, insofar as his provisional liberty is concerned, the highest ace up his sleeve, so to speak. On the other hand, when an accused is entitled to bail as a matter of discretion, the ace up his sleeve would be his right to a summary hearing of his application for bail, considering that he is not entitled to the constitutional right to bail. Therefore, it can be said that in both *Muñoz* and *Donato*, the Supreme Court denied the accused, by virtue of waiver, their greatest chance at provisional liberty.

But still, needless to say, *Muñoz* only involved the right to a summary

¹⁵ *Muñoz*, 83 Phil 609, at 611.

¹⁶ C.A.No.682, Sec. 19: AN ACT CREATING THE PEOPLE'S COURT AND AN OFFICE OF SPECIAL PROSECUTORS FOR THE PROSECUTION AND TRIAL OF CRIMES AGAINST NATIONAL SECURITY COMMITTED DURING THE SECOND WORLD WAR, AND FOR OTHER PURPOSES (1945). "x x x Provided, however, That existing provisions of law to the contrary notwithstanding, the aforesaid political prisoners may, in the discretion of the People's Court, after due notice to the office of the Special Prosecutors and hearing, be released on bail, even prior to the presentation of the corresponding information, unless the Court finds that there is strong evidence of the commission of a capital offense."

¹⁷ *Duran vs. Abad Santos*, 75 Phil. 410 (1945).

¹² *People vs. Homeres*, 84 Phil. 525 (1949); *People vs. Dichoso*, 96 SCRA 957 (1980).

¹³ *Donato*, at 30 (citing I, TOLENTINO, CIVIL CODE OF THE PHILIPPINES and Waxman vs. United States, 12 F2d 775).

¹⁴ 83 Phil. 609 (1949).

hearing of an application for bail, and *not* the right to bail *per se*.

Donato went past the fringes and ran straight to the very core when it declared that the constitutional right to bail *can* be waived.

TO BAIL OR NOT TO BAIL

We come now to the reasons behind the rulings.

Actually, the Supreme Court resolved the issues in the reverse. Instead of dealing with the more obvious question, i.e., whether or not the right to bail is waivable, it first dealt with the factual issue as to whether or not *Kumander Bilog* did waive his right to bail.

It would be convenient at this point to recall the agreement before the Supreme Court during the habeas corpus proceedings which led to the compromise judgment dismissing the habeas corpus case. Its terms were the following:¹⁸

[a] The petition for habeas corpus will be withdrawn by petitioners and Josefina Cruz and Jose Milo Concepcion will be immediately released but shall appear at the trial of the criminal case for rebellion under their personal recognizance;

[b] Petitioner Rodolfo Salas will remain in legal custody and face trial before the court having custody over his person;

[c] The warrant of arrest for the persons of Josefina Cruz and Jose Milo Concepcion will be recalled in view of formal manifestation before the Supreme Court that they will submit themselves to the court having jurisdiction over their person.

The Supreme Court held¹⁹ that:

herein respondent²⁰ will remain in actual physical custody of the court, or in actual confinement or detention, as distinguished from the stipulation concerning his co-petitioners, who were to be *released* in

¹⁸ *Donato*, at 23.

¹⁹ *Donato*, at 26-27. "Custody" was defined as nothing less than actual imprisonment.

²⁰ Rodolfo Salas.

view of the *recall* of the warrants of arrest against them; they agreed, however, to "submit themselves to the *court having jurisdiction over their persons*." Note should be made of the deliberate care of the parties in making a fine distinction between *legal custody and court having custody over the person* in respect to Rodolfo Salas and *court having jurisdiction over the persons* of his co-accused. Such a fine distinction was precisely intended to emphasize the agreement that *Rodolfo Salas* will not be released, but should remain in custody. (Emphasis by the Court)

The Court then arrived at the question of law involved in the case -- can the constitutional right to bail be waived?

Mr. Justice Davide opened with an introduction of the concept of waiver as embodied in our New Civil Code.²¹ He proceeded with a discussion of what rights may be subjected to waiver. And, from his cited authorities,²² he concluded that rights guaranteed by the Constitution are among such waivable rights. Three waivable constitutional rights were given as examples: the right against unreasonable searches and seizures, the right to counsel and to remain silent, and the right to be heard.

After the citing the constitutional provision stating the form and manner with which the right to remain silent and to have competent and independent counsel may be waived,²³ Justice Davide immediately unleashed an animal never before seen in this jurisdiction:

We hereby rule that the right to bail is another of the constitutional rights which can be waived. It is a right which is personal to the accused and whose waiver would not be contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law.

²¹ R. A. 386, NEW CIVIL CODE, Art. 6: "Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law."

²² Among these authorities was *Commonwealth vs. Perrillo* (16 A2d 50, at 57), which stated that "(R)ights guaranteed to one accused of a crime fall naturally into two classes: (a) those in which the state, as well as the accused is interested; and (b) those which are personal to the accused, which are in the nature of personal privileges. Those of the first class cannot be waived; those of the second may be."

²³ PHIL. CONST., Art.III, Sec. 12(1).

THE BEWILDERING

Though the *Donato* ruling would certainly enrich our jurisprudence, providing as it does a legal basis for the waivability of the constitutional right to bail, a few queries are in order.

A.

There was a need to lay down the exact nature of the right to bail. The thrust of the Supreme Court's argument depended on the fact that constitutional rights *personal to the accused* can be waived. Sadly, the Supreme Court deprived us of a showing as to the exact nature of the right to bail, and how, on the basis of such a showing, it would arrive at its conclusion. And this suggestion will accept nothing less than exhaustive, meticulous argumentation. After all, whenever a protection given by the Constitution is waived by the person entitled to that protection, the presumption is always against waiver.²⁴

1. "THE RIGHT TO BAIL IS PERSONAL TO THE ACCUSED."

Bail is awarded to one accused, under our system of constitutional government, to honor the presumption of innocence until guilt is proved, and to enable the accused to prepare his defense to the charge.²⁵ This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction.²⁶ In other words, it is a mode of acquiring *provisional liberty*.²⁷ Is this mode of acquiring provisional liberty a right purely "personal to the accused"?

The answer must be in the negative.

Indeed, the preservation of liberty is such a major preoccupation of our political system.²⁸ Our Bill of Rights is a clear manifestation of this preoccupation. Individual freedom is one of the most precious treasures jealously protected in our Constitution.²⁹ And everyone is protected, including an accused

²⁴ *People vs. Jara*, 144 SCRA 516, at 531 (1986).

²⁵ *Stack vs. Boyle*, 342 U.S. 1, 96 L ed 3 at 8 (1951).

²⁶ *Hudson vs. Parker*, 156 U.S. 77, 39 L ed 424 at 427 (1894).

²⁷ See *Muñoz, Almeda vs. Villaluz*, 66 SCRA 38 (1975); and *Montalbo vs. Santamaria*, 54 Phil. 955 (1930), where the Supreme Court called it as such.

²⁸ *People vs. Hernandez*, 99 Phil. 515, at 551 (1956).

²⁹ *Herras Teehankee vs. Director of Prisons*, 76 Phil. 756 at 767 (1946).

in a criminal case, so that the United States Supreme Court set out as an underlying principle,³⁰ that

natural life cannot be legally be disposed of or destroyed by any individual, neither by the person himself nor by any other of his fellow creatures, merely upon their own authority. The public has an interest in his life and liberty. Neither can be lawfully taken except in the mode prescribed by law. That which the law makes essential in proceedings involving the deprivation of life or liberty cannot be dispensed with or affected by the consent of the accused; much less by his mere failure, when on trial and in custody, to object to unauthorized methods.

A regime of liberty is honored in the observance and not in the breach.³¹

The fact that the right to bail deals with *provisional* and not absolute liberty does not at all blur the solid line drawn. The purpose of the provisional nature of such right is to insure with reasonable certainty the attendance of the accused for the subsequent trial.³² Otherwise, the accused, based on the right to be presumed innocent, is just as entitled to absolute liberty.³³

A right guaranteeing an individual freedom does not *ipso facto* make it personal to the person for whom it is secured. Its observance may, after all, be of the utmost public concern. The right to bail is in no way purely personal to the accused.

2. THE RIGHT TO BAIL AND THE OTHER CONSTITUTIONAL RIGHTS

The *direct* attachment of the right to bail to one's liberty is what distinguishes it from all the other waivable constitutional rights mentioned by Justice Davide. To be sure, one finds no surprise in the fact that the constitutional right against unreasonable searches and seizures can be waived for the maxim em-

³⁰ *Hopt vs. People of Utah*, 110 U.S. 576, 28 L ed 262 (1884).

³¹ *De la Camara vs. Enage*, 41 SCRA 1 at 6 (1971).

³² *Id.*

³³ On the right to be presumed innocent: "The person accused of an offense is confronted by the full panoply of State authority; in a manner of speaking, he goes to bat with all the bases loaded. It is important, in the interest of justice, to even up the odds as it were by guaranteeing (the accused) certain rights during (his) trial. Chief among these is the constitutional presumption of innocence." CRUZ, CONSTITUTIONAL LAW 296 (1989).

bodied in such a constitutional right is that "a man's home is his castle."³⁴ A person may or may not allow any unreasonable search or seizure within his home in accordance with his free will and volition. Incidentally, when Justice Davide stated in *Donato* that "rights guaranteed by the Constitution" may be competently waived, he cited Dr. Tolentino as his source. Dr. Tolentino, in turn, extracted this statement from *Waxman v. United States*.³⁵ And *Waxman* dealt with the waiver of the right against unreasonable searches and seizures. Hence, the statement as quoted by Justice Davide must be placed in the proper context. It should not, in any way, purport to be all-encompassing.

The right to be heard can be broken down into three specific rights: the right to present evidence and to be present at the trial, the right to be assisted by counsel, and the right to compulsory process to compel the attendance of witnesses in his behalf.³⁶ These rights are indispensable in any criminal prosecution where the stakes are the liberty of the accused, who must, for this reason, be given a chance to defend himself.³⁷ However, superior policy considerations must prevail. Hence, in *People v. Dichoso*,³⁸ the trial Court leniently granted repeated continuances in favor of the accused. But when it was noticed that the accused had obviously embarked on a scheme to defeat the expeditious determination of the case and was trifling with the administration of justice, the Supreme Court cried waiver. What is apparent in the case of the right to be heard is that it only becomes waivable in view of a clear, expressly invoked policy consideration. The fact that the waiver is not violative of public policy is not enough. In the case of the waivability of the right to bail in *Donato*, no policy consideration had been clearly established.

And as for the right to counsel and to remain silent during custodial investigation, it cannot be gainsaid that the "form and manner"³⁹ with which it can be waived is not at all to be overlooked. Precisely, "the form and manner," of the waiver i.e., that it must be in writing and made with the assistance of

³⁴ See *U.S. vs. Arceo*, 3 Phil.381, at 384 (1904).

³⁵ 12 F2d 775 (1926).

³⁶ BERNAS, *supra* note 4, at 378.

³⁷ CRUZ, *supra* note 34, at 300.

³⁸ Cited by the Court in *Donato*.

³⁹ PHIL. CONST. Art.III, Sec. 12 (1): "Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel."

counsel, is meant to ensure that the waiver was intelligently made. It goes without saying that the waivability of the right to counsel and to remain silent is enshrined in the Constitution itself, a distinction which the right to bail does not enjoy. On the other hand, the right of the accused to counsel during trial has never been considered subject to waiver. The practice has always been for the trial court to provide the accused with a counsel *de officio* if he has no counsel of his own choice, or cannot afford one.⁴⁰

In view of the foregoing arguments, it is respectfully submitted that the ruling that the constitutional right to bail is waivable deserves a second look.

B.

We turn now to the factual issue -- did *Kumander Bilog* waive his right to bail?

A tinge of doubt would resolve the factual issue in the negative. There are 2 reasons why.

First, there are known requisites for a valid waiver. According to Dr. Tolentino, the person waiving a right (1) must actually have the right he renounces; (2) must have the capacity to make the renunciation; and (3) *must make the renunciation in a clear and unequivocal manner*.⁴¹ A person invoking the waiver, therefore, must show the unequivocal manner in which it was made. Absent any showing of an unequivocal intent, no waiver can ever ensue. And doubt figures as the one ingredient to leave this third requisite unsatisfied. Second, when a constitutional right is vested in a party and there is doubt as to whether he has waived it, such doubt should be resolved in his favor.⁴² This is obviously a privilege constitutional rights enjoy.

The Supreme Court held in *Donato* that when the agreement in the habeas corpus proceedings provided that Salas "will remain in *legal custody* and face trial before the court having *custody* over his person," it meant that Salas would be imprisoned permanently, only to be released in case of an acquittal. The main supporting argument was the fact that, in the case of Salas' co-accused Cruz and Concepcion, who were released, the agreement provided that they "will submit themselves to the court having *jurisdiction* over their person." Justice Davide is

⁴⁰ *Flores vs. Ruiz*, 90 SCRA 428 (1979).

⁴¹ TOLENTINO, *supra* note 8, at 30.

⁴² *Brookhart vs. Janis*, 384 U.S. 1, 16 L ed 2d 314 at 317 (1966).

of the opinion that if the parties to the agreement did not intend Salas to remain permanently behind bars, they would have used the word "jurisdiction" rather than "custody," as in the case of Cruz and Concepcion. Crucial is the fact that the Supreme Court established a definition of the word "custody." It was defined as "nothing less than actual imprisonment."⁴³ Salas admitted this definition. And the Court held it to be binding upon him.

Note that the phrase "will remain in legal custody and face trial before the court having custody over his person" involves two instances.

1. "...WILL REMAIN IN LEGAL CUSTODY..."

It is admitted that custody defined as "nothing less than actual imprisonment" equally applies to this first part of the phrase.⁴⁴ But there is a *caveat*. To say that Salas will remain behind bars after the dismissal of the habeas corpus case does not necessarily mean that he will remain behind bars *permanently*. And it is totally safe to conclude that Salas' placement in "custody of the law" caused to ripen his constitutional right to bail, for it has been held before that the right to bail accrues *only* when a person is arrested or placed in custody of the law.⁴⁵ In other words, instead of condemning to rot Salas' constitutional right, this part of the phrase duly set it up for the picking.

2. "... AND WILL FACE TRIAL BEFORE THE COURT HAVING CUSTODY OVER HIS PERSON..."

It seems that "custody" here is not the same "custody" defined as "nothing less than actual imprisonment." Surely, as stated, this definition fits well into the first half of the phrase, which provides that Salas "will remain in legal custody." The effect of applying the Court definition of "custody" in the second half of the phrase would lead to absurdity, for Salas was not and never could have been actually imprisoned *in court*. At best, Salas was and could only have been imprisoned in the hands of law enforcers.

"Custody" seems to have been given a second meaning. It was used not

⁴³ The definition in Bouvier's Law Dictionary was used.

⁴⁴ But see *Abriol vs. Homeres*, 84 Phil. 525 (1949), where the Court, through Mr. Justice Ozaeta, stated that "(petitioner) may be held under the custody of the law by being detained or admitted to bail until the case against him is finally and lawfully decided." The Court seems to have used "custody of the law" rather loosely.

⁴⁵ *Feliciano vs. Pasicolan*, 2 SCRA 888 (1961).

in an actual, but a *constructive sense*. And when it is used in this constructive sense, two possible scenarios may arise: (1) while Salas remains in actual custody of law enforcers, the Court would still retain powers over him, i.e., the power to hear and determine his case and the power to compel his presence in certain instances; or (2) while Salas *is released on bail*, the Court would still retain the aforementioned powers over him. Under a bail bond or recognizance, the principal is, upon filing of the bond, released in the custody of the bondsman, but is still *constructively* in custody of the law, and the dominion of the surety is a continuance of original imprisonment.⁴⁶

The second half of the phrase, therefore, admits of a situation wherein Salas would be granted bail.

And as for Cruz and Concepcion, their release under their personal recognizance involved the condition that they "shall appear at the trial of the criminal case for rebellion filed against them." So despite the fact that no sureties were involved in their release, they still were in *constructive* custody of the law, not by operation of the Constitution nor of the Rules on Criminal Procedure, but by virtue of *contract* -- the compromise agreement placed them under such custody when it set the abovestated condition.

The word "jurisdiction" as used in the case of Cruz and Concepcion is not at all repugnant to the concept of "custody" as used in the case of Salas.

A doubt now exists as to Salas' unequivocal intent to waive his constitutional right to bail. But bear in mind that this does not necessarily avoid the stipulation in the compromise agreement that Salas "will remain in legal custody and will submit himself to the jurisdiction of the court having custody over his person"; more so, it does not avoid the compromise agreement for being against public policy. The compromise stands as it is, but should be interpreted in accordance with the primary and general acceptance of its terms.⁴⁷

What is being put into question here is the interpretation that the above stipulation in the agreement constituted a waiver of Salas' constitutional right to

⁴⁶ *In Re Lexington Surety & Indemnity Co.*, 272 N.Y. 210 at 212 (1936).

⁴⁷ REVISED RULES OF EVIDENCE, Rule 130, Sec.14: "Peculiar signification of terms. -- The terms of a writing are presumed to have been used in their primary and general acceptance, but evidence is admissible to show that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly." Of course, no local, technical, or otherwise peculiar signification of the terms of the compromise agreement had been satisfactorily pointed - out.

bail. What is essential, therefore, is that the interpretation favoring the waiver must not, to say the least, drop anchor in the shores of our vast and expanding case law. This is because, as discussed, the factual circumstances of the case do not exactly provide for a welcome port. And more importantly, the ruling that the constitutional right to bail is waivable needs to be reevaluated.

CONCLUSION

People v. Donato left us to chalk up another constitutional right which may be waived. But while we stand sure as to the waivability of the right to bail, we may be at a loss for words to explain why.

On the fateful day of June 5, 1991, we were left with more questions than answers.