Republic of the Philippines
Supreme Court
Manila

A.M. No. 12-11-2-SC

GUIDELINES FOR DECONGESTING HOLDING JAILS BY ENFORCING THE RIGHTS OF ACCUSED PERSONS TO BAIL AND TO SPEEDY TRIAL

Whereas, the Constitution provides in Section 13, Article III, that 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 released on recognizance as the law may provide and further, that excessive bail shall not be required;

Whereas, the Supreme Court has allowed the summary hearing of applications for bail of persons charged with offenses punishable by death, *reclusion perpetua*, or life imprisonment;

Whereas, there is a need to effectively implement existing policies laid down by the Constitution, the laws and the rules respecting the accused's rights to bail and to speedy trial in the context of decongesting our detention jails and humanizing the conditions of detained persons pending the hearing of their cases;

Whereas, the Supreme Court Committee for the Decongestion of Provincial, City, and Municipal Jails has recommended for the adoption of guidelines for decongesting holding jails by enforcing the rights of accused persons to bail and to speedy trial; and

Whereas, the Supreme Court En Banc, finds merit in the recommendation;

Now, therefore, all trial courts, public prosecutors, public attorneys, private practitioners, and other persons involved in protecting and ensuring the grant to the accused of his rights to bail and to speedy trial are enjoined as follows:

A. THE RIGHT TO BAIL

Sec. 1. *Duty of the court to fix the appropriate bail.* – (a) The court shall, after finding sufficient cause to hold the accused for trial, fix the amount of bail that the latter may post for his provisional release, taking into account the public prosecutor's recommendation and any relevant data that the court may find from the criminal information and the supporting documents submitted with it, regarding the following:

(1) Financial ability of the accused to give bail;
(2) Nature and circumstances of the offense;
(3) Penalty for the offense charged;
(4) Character and reputation of the accused;
(5) Age and health of the accused;
(6) Weight of the evidence against the accused;
(7) Probability of the accused appearing in trial;
(8) Forfeiture of other bonds;
(9) Fact that accused was a fugitive from justice when arrested; and
(10) Pendency of cases in which the accused is under bond.

The Department of Justice's Bail Bond Guide shall be considered but shall not be controlling. In no case shall the court require excessive bail.

Sec. 2. *Fixing of the amount of bail.* – Pending the raffle of the case to a regular branch of the court, the accused may move for the fixing of the amount of bail, in which event, the Executive Judge shall cause the immediate raffle of the case for assignment and the hearing of the motion.

Sec. 3. *When amount of bail may be reduced.* – If the accused does not have the financial ability to post the amount of bail that the court initially fixed, he may move for its reduction, submitting for that purpose such documents or affidavits as may warrant the reduction he seeks. The hearing of this motion shall enjoy priority in the hearing of cases.

Sec. 4. *Order fixing the amount of bail inappealable.* – The order fixing the amount of the bail shall not be subject to appeal.

Sec. 5. *Release after service of minimum imposable penalty.* – The accused who has been detained for a period at least equal to the minimum of the penalty for the offense charged against him shall be ordered released, *motu proprio* or on motion and after notice and hearing, on his own recognizance without prejudice to the continuation of the proceedings against him. [Sec. 16, Rule 114 of the Rules of Court and Sec. 5 (b) of R.A. 10389]

Sec. 6. *Bail in offenses punishable by death, reclusion perpetua or life imprisonment.* – a) The hearing of the accused's motion for bail in offenses punishable by death, *reclusion perpetua* or life imprisonment shall be summary, with the prosecution bearing the burden of showing that the

evidence of guilt is strong. The accused may at his option, if he wants the court to consider his evidence as well, submit in support of his motion the affidavits of his witnesses attesting to his innocence.

b) At the hearing of the accused's motion for bail, the prosecution shall present its witnesses with the option of examining them on direct or adopting the affidavits they executed during the preliminary investigation as their direct testimonies.

c) The court shall examine the witnesses on their direct testimonies or affidavits to ascertain if the evidence of guilt of the accused is strong. The court's questions need not follow any particular order and may shift from one witness to another. The court shall then allow counsels from both sides to examine the witnesses as well. The court shall afterwards hear the oral arguments of the parties on whether or not the evidence of guilt is strong.

d) Within forty-eight (48) hours after hearing, the court shall issue an order containing a brief summary of the evidence adduced before it, followed by its conclusion of whether or not the evidence of guilt is strong. Such conclusion shall not be regarded as a pre-judgment on the merits of the case that is to be determined only after a full-blown trial.

Sec. 7. *Frivolous complaints against judges.* – A party or a lawyer who is guilty of filing a frivolous administrative complaint or a petition for inhibition against a judge arising from the latter's action on the application for bail may be appropriately sanctioned.

B. THE RIGHT TO SPEEDY TRIAL

Sec. 8. *Observance of time limits.* – It shall be the duty of the trial court, the public or private prosecutor, and the defense counsel to ensure, subject to the excluded delays specified in Rule 119 of the Rules of Court and the Speedy Trial Act of 1998, compliance with the following time limits in the prosecution of the case against a detained accused:

(a) The case of the accused shall be raffled and referred to the trial court to which it is assigned within three days from the filing of the information;

(b) The court shall arraign the accused within ten (10) days from the date of the raffle;

(c) The court shall hold the pre-trial conference within thirty (30) days after arraignment or within ten (10) days if the accused is under preventive detention; provided, however, that where the direct testimonies of the witnesses are to be presented through judicial affidavits, the court shall give the prosecution not more than twenty (20) days from arraignment

within which to prepare and submit their judicial affidavits in time for the pre-trial conference;

(d) After the pre-trial conference, the court shall set the trial of the case in the pre-trial order not later than thirty (30) days from the termination of the pre-trial conference; and

(e) The court shall terminate the regular trial within one hundred eighty (180) days, or the trial by judicial affidavits within sixty (60) days, reckoned from the date trial begins, minus the excluded delays or postponements specified in Rule 119 of the Rules of Court and the Speedy Trial Act of 1998.

Sec. 9. *Dismissal on ground of denial of the right to speedy trial.* – The case against the detained accused may be dismissed on ground of denial of the right to speedy trial in the event of failure to observe the above time limits.

Sec. 10. *Provisional dismissal.* – (a) When the delays are due to the absence of an essential witness whose whereabouts are unknown or cannot be determined and, therefore, are subject to exclusion in determining compliance with the prescribed time limits which caused the trial to exceed one hundred eighty (180) days, the court shall provisionally dismiss the action with the express consent of the detained accused.

(b) When the delays are due to the absence of an essential witness whose presence cannot be obtained by due diligence though his whereabouts are known, the court shall provisionally dismiss the action with the express consent of the detained accused provided:

(1) the hearing in the case has been previously twice postponed due to the non-appearance of the essential witness and both the witness and the offended party, if they are two different persons, have been given notice of the setting of the case for third hearing, which notice contains a warning that the case would be dismissed if the essential witness continues to be absent; and

(2) there is proof of service of the pertinent notices of hearings or subpoenas upon the essential witness and the offended party at their last known postal or e-mail addresses or mobile phone numbers.

(c) For the above purpose, the public or private prosecutor shall first present during the trial the essential witness or witnesses to the case before anyone else. An essential witness is one whose testimony dwells on the presence of some or all of the elements of the crime and whose testimony is indispensable to the conviction of the accused.

Sec. 11. *Service of subpoena and notices through electronic mail or mobile phones.* – Subpoena and notices may be served by the court to parties and witnesses through electronic mails (e-mail) or through mobile phone either through phone calls or through short messaging service (SMS).

Sec. 12. *Proof of service of notice of hearing or subpoena.* – To ascertain the proper service of notice of hearing or subpoena:

(a) The public prosecutor shall, during inquest or preliminary investigation, require the complainant and his witnesses and, in proper cases, the police officers who witnessed the commission of the crime subject of the investigation, to leave with him their postal and e-mail addresses and mobile phone numbers for use in summoning them when they need to appear at the hearings of the case.

(b) When requesting the court to issue a subpoena or subpoena *duces tecum* for their witnesses, the parties shall provide the court with the postal and e-mail addresses and mobile phone numbers of such witnesses.

(c) The service of notice of hearing or subpoena at the postal address, e-mail address, or through mobile phone number shall be proved by any of the following:

(1) an officer's return or affidavit of service if done by personal service, or by registry return card;
(2) printouts of sent e-mail and the acknowledgment by the recipient;
(3) printouts of electronic messages transmitted through the court's equipment or device and the acknowledgment by the recipient; or
(4) reports of phone calls made by the court.

(d) The postal and e-mail addresses as well as the mobile phone numbers supplied by the parties and their witnesses incident to court cases shall be regarded as part of the judicial processes in those cases. Consequently, any person who uses the same without proper authority or for purposes other than sending of court notices shall be deemed guilty of indirect contempt and accordingly punished.

(e) In cases of police officers whose testimonies are essential to the prosecution of the case, service of the notice of hearing or subpoena on them shall be made through the police unit responsible for the arrest and prosecution of the accused, copy furnished the Personnel Department of the Philippine National Police. It shall be the responsibility of the head of that police unit to ensure the transmission of the notice or subpoena to the addressee. Service upon the police unit shall be deemed service upon such police officers.

(f) The court shall cause the service of a copy of the order of provisional dismissal upon the offended party in the manner provided above.

Sec. 13. *Report of government expert witnesses.* – A certified copy of the report of a government medical, chemical, or laboratory expert relating to a criminal case shall be admissible as *prima facie* evidence of the truth of its contents. The personal appearance in court of a witness who prepared the report shall be unnecessary unless demanded by the accused for the purpose of cross-examination.

Sec. 14. *Revival of cases provisionally dismissed.* – The one or two-year period allowed for reviving a criminal case that has been provisionally dismissed shall be reckoned from the issuance of the order of dismissal. The dismissal shall become automatically permanent if the case is not revived within the required period. Such permanent dismissal shall amount to an adjudication of the case on the merits.

Sec. 15. *Local Task Force Katarungan at Kalayaan.* – (a) The Court shall establish a Task Force Katarungan at Kalayaan in appropriate places for the purpose of eliminating unnecessary detention. It shall be chaired by a Regional Trial Court (RTC) Judge, with a Metropolitan or Municipal Trial Court Judge as vice-chairman, both to be appointed for a term of two years by the Executive Judge of the place. The city or provincial prosecutor of the place or his representative and the local head of the Public Attorney's Office or his representative shall be members of the Task Force. The assistance of the local Bureau of Jail Management and Penology and the Office of the Provincial Governor may be enlisted.

(b) The Task Force shall track and keep a record of the progress of the criminal cases of all detained persons within their jurisdiction and ensure that such persons are accorded the rights and privileges provided by law, the rules, and these guidelines.

(c) Each court shall maintain a "Detainees Notebook," that shall be supplied free by the Office of the Court Administrator and shall contain (i) the full name of the accused; (ii) the docket number and title of the case' (iii) the kind of crime charged; (iv) the date his detention began; (v) the date when his detention becomes equal to the minimum of the imposable penalty; (vi) the date when his detention becomes equal to the maximum imposable penalty; (vii) the date of arraignment; (viii) the date of pre-trial hearing or conference; (ix) the first day of trial; (x) the statutory last day of trial if no excluded delays or postponements are incurred; (xi) sufficient space for entering the progress of the hearing of the case; and (xii) such other data as may be essential to the monitoring of his or her case. One (1) copy of the notebook shall be attached to the record of the case and other copy kept by the jail warden which copy shall be brought with the accused at the hearing. The branch clerk of court shall update the two copies of the notebook at every hearing by stating what action the court has taken in it, the next scheduled hearing, and what action the court will further take on the case.

(d) The Task Force shall have access to all case records and information relating to detained persons and shall advise the judges hearing their cases, when warranted, of the need for them to act on any incident or situation that adversely affects the rights of detained persons or subject them to undue or harsh treatment.

(e) The Office of the Chief Justice shall exercise direct supervision over all such Task Forces.

These guidelines shall take effect on May 1, 2014 after publication in a newspaper of general circulation in the Philippines and shall apply to all accused persons under preventive detention.

Manila, Philippines, March 18, 2014.

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

(On Official Leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice