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reduce the award for penalty as provided under such suretyship agreements if the same is iniquitous or unconscionable,[16] we are unable to give relief to petitioner by way of reducing the amount of the principal liability as surety under the circumstances of this case.

WHEREFORE, the petition is dismissed for lack of merit. The decision of the Court of Appeals is *AFFIRMED* in all respects.

SO ORDERED.

Melo (Chairman), Panganiban, and *Sandoval-Gutierrez, JJ.,* concur.

Vitug, J., in the result, *(pro hac vice).*

THIRD DIVISION

[A.M. No. RTJ-00-1597. August 20, 2001]

WILSON ANDRES, *complainant, vs.* **JUDGE ORLANDO D. BELTRAN, REGIONAL TRIAL COURT, TUGUEGARAO CITY, BRANCH 2,** *respondent.*

SYNOPSIS

Complainant Andres, who was charged with the crime of murder, was granted bail and released from detention by then Presiding Judge Principe. Later, when Acting Presiding Judge Beltran set the date for initial hearing for reception of evidence for the accused. Accused Andres appeared at the scheduled hearing, but without counsel. Judge Beltran then cancelled the bail bond and ordered the detention of accused Andres. Hence, this administrative charge against Judge Beltran.

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[16] Article 1229 of the Civil Code provides: "The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable." Applied in Palmares vs. Court of Appeals, 288 SCRA 422 (1998); Barons Marketing Corporation vs. Court of Appeals, 286 SCRA 96 (1998); Insular Bank of Asia & America vs. Salazar, 159 SCRA 133 (1988).

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For the precipitate cancellation of the bail bond, respondent Judge was guilty of grave abuse of authority. When accused Andres herein, charged with murder punishable by *reclusion perpetua* was then granted bail, it is assumed that the judge has determined that the evidence of guilt against him was not strong. Although later the court may change the amount of the bail. The law mandates that it must be "upon good cause shown." This would entail a hearing that would require the presence of accused and counsel. Further, bail cannot be forfeited against the accused who did not violate the conditions of the bail, and neither the failure of the counsel to appear at the scheduled hearing nor the alleged delay of the proceedings are valid grounds for cancellation of bail.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; WHEN DISCRETIONARY; DISCUSSED.—** The grant of bail to an accused charged with an offense that carries with it the penalty of *reclusion perpetua*, as in this case, is discretionary on the part of the trial court. In other words, accused is still entitled to bail but no longer "as a matter of right". Instead, it is discretionary and calls for a judicial determination that the evidence of guilt is not strong in order to grant bail. The prosecution is accorded ample opportunity to present evidence because by the very nature of deciding applications for bail, it is on the basis of such evidence that judicial discretion is weighed in determining whether the guilt of the accused is strong.
2. **ID.; ID.; ID.; INCREASE, REDUCTION AND FORFEITURE OF BAIL BOND.—** Section 20 of Rule 114 provides that after the accused shall have been admitted to bail, the court may, "upon good cause shown," either increase or decrease the amount of the same. This would entail a hearing for the purpose of showing "good cause" and hence, would require not only the presence of the accused but also of the latter's counsel. Neither can the bail of the accused be forfeited pursuant to Section 21, Rule 114 since it is not disputed that accused did not violate the conditions of the bail as he was present at the scheduled hearing.
3. **ID.; ID.; ID.; FAILURE OF COUNSEL TO APPEAR AT SCHEDULED HEARING, NOT MATERIAL TO BAIL.—**The failure of counsel for the accused to appear at the scheduled hearing is not a valid ground for cancellation of bail. Nowhere in the provisions of Rule 114 does such ground exist. Under Section 2 (Conditions of the bail), the presence of counsel is not a condition of the bail. Neither is it a reason for an increase or forfeiture of bail

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under Sections 20 and 21. Section 22, which states the instances when bail may be cancelled, i.e., surrender of the accused, proof of his death, acquittal of the accused, dismissal of the case or execution of the judgment of conviction is not in point, aside from the fact that it also requires an application of the bondsmen and due notice to the prosecutor.

4. **ADMINISTRATIVE LAW; JUDGES; PROPER CONDUCT; VIOLATED BY THE PRECIPITATE CANCELLATION OF BAIL BOND.**— Respondent Judge *motu proprio* cancelled the bail bond in view of the absence of counsel for the accused during the hearing initially scheduled for the presentation of evidence for the defense. This is censurable. Accused should not be punished for the absence of his counsel by the cancellation of his bail and his immediate detention. The duty of a judge is not only to administer justice but also to conduct himself in a manner that would avoid any suspicion of irregularity. He has the avowed duty of promoting confidence in the judicial system. Admittedly, judges cannot be held to account for an erroneous order or decision rendered in good faith, but this defense is much too frequently cited. We note that respondent Judge ordered the release of the accused but only after finding that counsel for the accused was not served a copy of the notice of hearing. This is a procedural lapse on the part of the respondent. Had he carefully searched the records, he could have known the real reason for counsel's absence during the scheduled hearing. Neither can he blame his staff for the lack of notice to counsel. Proper and efficient court management is the responsibility of the judge; he is the one directly responsible for the proper discharge of the official functions. Respondent Judge's precipitate order cancelling the bail bond of the accused deprived accused of his right to liberty, even if temporarily. This is not excusable. A judge should administer his office with due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law.

APPEARANCES OF COUNSEL

Joseph Elmer Ramos Alcid for complainant.

DECISION

GONZAGA-REYES, *J.*:

Herein complainant Wilson Andres was charged with the crime of murder and the case was docketed as Criminal Case No. 7155

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before the Regional Trial Court of Tuguegarao City, Branch 2. The trial court, then presided by Judge Abraham Principe, granted bail upon motion of the accused and ordered his release from detention. After presentation of evidence for the prosecution, accused Wilson Andres filed a "motion to dismiss by way of demurrer to evidence". Respondent Judge Orlando Beltran, in his capacity as Acting Presiding Judge of RTC-Tuguegarao, Branch 2 denied the motion in his Order of November 25, 1999. On November 29, 1999, the court issued a subpoena to accused Andres informing him that the criminal case is set for initial hearing for reception of evidence for the accused on January 31, 2000. Accused appeared at the scheduled hearing but his counsel was not present. Respondent Judge then issued an order cancelling the bail bond of accused Andres and ordered his detention in his Order dated January 31, 2000, to wit:

"In view of the absence of Atty. Joseph Alcid and considering the fact that the presentation of defense evidence in this case had been delayed for almost one year from the time that the prosecution rested its case, the bailbond posted for the provisional liberty of the accused Wilson Andres is hereby cancelled and is ordered detained, specially since the accused is not entitled to bail as a matter of right as the offense charged is Murder."

Accused Andres was detained from January 31, 2000 until February 9, 2000[1] when an order for his release was issued after the trial court found that no subpoena or notice of hearing was sent to counsel of accused.[2]

Hence, the instant administrative case for conduct unbecoming of a judge, serious misconduct, inefficiency and gross ignorance of the law.

Herein complainant avers that the act of respondent Judge is clearly an abuse of authority as the grounds relied upon by him for cancellation of his bail bond are not provided for under the rules.

Complainant alleges that there was no notice to his counsel regarding the hearing for reception of evidence for the defense set

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[1] Par. 9 of the Complaint.

[2] Par. 3 of the Reply (To Comment).

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on January 31, 2000 and hence, his counsel did not appear at the scheduled hearing. Complainant further alleges that at the said hearing, respondent Judge told him to secure the services of a new counsel immediately so he could hear the case and if accused could not secure one he (respondent judge) would order his incarceration. The case was called again and counsel for the accused was still not around. Respondent Judge then allegedly ordered the incarceration of the accused. Complainant argues that he did not violate any conditions of the bail and the fact that his counsel was not present during the scheduled hearing is not a ground for the cancellation of his bail bond.

In his Comment, respondent Judge contends that accused is not entitled to bail as a matter of right since he is charged with "a capital offense or at least one punishable by *reclusion perpetua*." He argues that he was not the one who granted accused bail during the earlier stage of the proceedings and respondent Judge was entitled to make his own assessment of the evidence, which was not available at the time bail was first granted, to determine whether evidence of guilt was strong on the basis of the evidence. Respondent Judge further contends that the order granting bail had specifically reserved to the court the right to recall the order granting bail if evidence of conspiracy would be strong, and that he was convinced that there was ground to recall the order granting bail as he took into consideration certain facts and circumstances such as: (1) the accused's co-accused has escaped and remained at large; (2) either accused or his counsel would absent themselves from the proceedings prompting cancellation of scheduled hearings without advance notice nor proper motion filed; (3) it was practically a year since the prosecution had rested its case and the defense had been scheduled to present its evidence; and (4) the evidence presented by the prosecution strongly pointed to the direction of the guilt of the accused prompting respondent Judge to deny the demurrer to evidence.

In his Reply to respondent's comment, complainant argues that he should have been given his day in court with respect to the cancellation of his bail bond. He avers that in the Order of February 9, 2000, respondent Judge ordered his release after finding that no subpoena or notice of hearing was served upon his counsel.

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After notice, both parties manifested that they are submitting the case on the basis of the pleadings/records already filed and submitted.

The Court Administrator recommended that respondent Judge Beltran be fined in the amount of two thousand (₱2,000.00) pesos for grave abuse of authority with a stern warning that a repetition of the same or similar act shall be dealt with more severely. The Court Administrator opined that the failure of counsel to appear during the scheduled hearing with due notice is not a ground for cancellation of the bail bond of the accused, more so if accused is present during the hearing.

We agree with the Court Administrator.

Respondent's Order of January 31, 2000 for the cancellation of bail actually cited the following grounds therefor, namely: (1) that the counsel of the accused failed to appear at the scheduled hearing; and (2) that the presentation of evidence for the defense has been delayed for almost a year from the time the prosecution rested its case. Respondent Judge further stated that the bail bond is cancelled "specially since the accused is not entitled to bail as a matter of right as the offense charged is Murder."

Herein complainant was charged with murder punishable by *reclusion perpetua* to death[3] and, under the rules, he was not entitled to bail as "a matter of right". Respondent Judge seems to impress upon the Court that the accused, having been charged with the crime of murder, is not entitled to bail at all or that the crime of murder is non-bailable. This is a misconception. The grant of bail to an accused charged with an offense that carries with it the penalty of *reclusion perpetua*, as in this case, is discretionary on the part of the trial court.[4] In other words, accused is still entitled to bail but no longer "as a matter of right". Instead, it is discretionary and calls for a judicial determination that the evidence of guilt is not strong in order to grant bail. The prosecution is accorded ample opportunity to present evidence because by the very nature of

[3] Article 248, as amended by RA 7659.

[4] *Guillermo vs. Reyes, Jr.*, 240 SCRA 154; *Basco vs. Rapatalo*, 269 SCRA 220.

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deciding applications for bail, it is on the basis of such evidence that judicial discretion is weighed in determining whether the guilt of the accused is strong.[5] Accused was granted bail by then Presiding Judge Principe and with such grant we assume that the trial judge made a judicial determination that the evidence of guilt is not strong.

Respondent Judge, in his Comment, argues that the order granting bail had "specifically reserved to the court the right to recall the order granting bail if evidence of conspiracy would be strong." The record is bereft of any copy of such order. Nonetheless, respondent Judge, in effect, is of the view that since the prosecution has rested its case and prosecution evidence had been adduced, he can make his own determination of whether or not the evidence adduced strongly suggest the guilt of the accused and if so, he can cancel the bail previously granted to the accused. Section 20[6] of Rule 114 provides that after the accused shall have been admitted to bail, the court may, "upon good cause shown," either increase or decrease the amount of the same. Needless to state, this would entail a hearing for the purpose of showing "good cause" and hence, would require not only the presence of the accused but also of the latter's counsel. Neither can the bail of the accused be forfeited pursuant to Section 21,[7] Rule 114 since it is not disputed that

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[5] *Santos vs. Ofilada,* 245 SCRA 56.

[6] Section 20, Rule 114 as amended by A.M. No. 00-5-03-SC provides:

"SEC. 20. *Increase or reduction of bail.*— After the accused is admitted to bail, the court may, upon good cause, either increase or reduce its amount. When increased amount within a reasonable period. An accused held to answer a criminal charge, who is released without bail upon filing of the complaint or information may, at any subsequent stage of the proceedings and whenever a strong showing of guilt appears to the court, be required to give bail in the amount fixed, or in lieu thereof, committed to custody."

[7] Section 21, Rule 114 as amended by A.M. No. 00-5-03-SC reads:

"SEC. 21. *Forfeiture of bail.*— When the presence of the accused is required by the court or these Rules, his bondsmen shall be notified to produce him before the court on a given date and time. If the accused fails to appear in person as required, his bail shall be declared forfeited and the bondsmen given thirty (30) days within which to produce their principal and to show cause why no judgment should be rendered against them for the amount of their bail. Within the said period, the bondsmen must:

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accused did not violate the conditions of the bail[8] as he was present at the scheduled hearing.

Respondent Judge Beltran also cited the ground that the counsel of the accused failed to appear at the scheduled hearing and that the presentation of evidence for the defense has been delayed for almost a year from the time the prosecution rested its case.

The failure of counsel for the accused to appear at the scheduled hearing is not a valid ground for cancellation of bail. Nowhere in the provisions of Rule 114 does such ground exist. Under Section 2 (Conditions of the bail), the presence of counsel is not a condition of the bail. Neither is it a reason for an increase or forfeiture of bail

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(a) produce the body of their principal or give the reason for his non-production; and

(b) explain why the accused did not appear before the court when first required to do so.

Failing in these two requisites, a judgment shall be rendered against the bondmen, jointly and severally, for the amount of the bail. The court shall not reduce or otherwise mitigate the liability of the bondsmen, unless the accused has been surrendered or is acquitted.

[8] Section 2, Rule 114 as amended by A.M. No. 00-5-03-SC provides:

"SEC. 2. Conditions of the bail; requirements.— All kinds of bail are subject to the following conditions:

(a) The undertaking shall be effective upon approval, and unless cancelled, shall remain in force at all stages of the case until promulgation of the judgment of the Regional Trial Court, irrespective of whether the case was originally filed in or appealed to it;

(b) The accused shall appear before the proper court whenever required by the court or these Rules;

(c) The failure of the accused to appear at the trial without justification and despite due notice shall be deemed a waiver of his right to be present thereat. In such case, the trial may proceed *in absentia;* and

(d) The bondsman shall surrender the accused to the court for execution of the final judgment.

The original papers shall state the full name and address of the accused, the amount of the undertaking and the conditions required by this section. Photographs (passport size) taken within the last six (6) months showing the face, and right profiles of the accused must be attached to the bail."

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under Sections 20 and 21. Section 22,[9] which states the instances when bail may be cancelled, *i.e.*, surrender of the accused, proof of his death, acquittal of the accused, dismissal of the case or execution of the judgment of conviction is not in point, aside from the fact that it also requires an application of the bondsmen and due notice to the prosecutor.

The alleged delay in the presentation of evidence by the defense is likewise not substantiated. As pointed out by herein complainant, while there were postponements, the Supreme Court ordered a change of venue allegedly upon request of the RTC-Judge of Roxas, Isabela and the criminal case went from one judge to another and finally it was transferred to RTC-Tuguegarao, Branch 2.[10] Moreover, accused was ordered arrested on July 12, 1996 and was arraigned on September 17, 1996. His motion for bail was favorably acted upon. From his release on bail on September 18, 1996, the case was set for several hearings on November 17, 1997, April 25, 1998, May 25, 1998, and September 24, 1998 but respondent Judge allowed the postponements thereof due to the absence of counsel for accused. On January 26, 1999, accused asked for the lifting of warrant of arrest and reinstatement of bond. On March 18, 1999, the prosecution made a formal offer of evidence. On July 14, 1999, accused asked for postponement which was granted. After the prosecution rested its case, accused filed on September 28, 1999 a motion to dismiss by demurrer to evidence. Said motion was denied on November 25, 1999 and the trial court set the hearing for reception of evidence for the defense on January 31, 2000. It was on said date that the respondent Judge ordered the cancellation of

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[9] Section 22, Rule 114 as amended by A.M. No. 00-5-03-SC provides:

"SEC. 22. *Cancellation of bail.*— Upon application of the bondsmen, with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.

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

In all instances, the cancellation shall be without prejudice to any liability on the bail."

[10] Par. 5 of the Replt (to Comment).

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bail of the accused. Verily, there was no "delay" in the presentation of evidence for the defense since the respondent Judge scheduled the hearing for reception of evidence only on January 31, 2000 from the time the motion to dismiss by demurrer to evidence was denied. The alleged delay should not be reckoned from the time the prosecution rested its case because the motion to dismiss by demurrer to evidence had to be resolved prior to presentation of evidence for the defense.

In the case at bar, respondent Judge *motu proprio* cancelled the bail bond in view of the absence of counsel for the accused during the hearing initially scheduled for the presentation of evidence for the defense. This is censurable. Accused should not be punished for the absence of his counsel by the cancellation of his bail and his immediate detention.

The duty of a judge is not only to administer justice but also to conduct himself in a manner that would avoid any suspicion of irregularity. He has the avowed duty of promoting confidence in the judicial system.[11] Admittedly, judges cannot be held to account for an erroneous order or decision rendered in good faith,[12] but this defense is much too frequently cited. We note that respondent Judge ordered the release of the accused but only after finding that counsel for the accused was not served a copy of the notice of hearing. This is a procedural lapse on the part of the respondent. Had he carefully searched the records, he could have known the real reason for counsel's absence during the scheduled hearing. Neither can he blame his staff for the lack of notice to counsel. Proper and efficient court management is the responsibility of the judge; he is the one directly responsible for the proper discharge of the official functions.[13] Respondent Judge's precipitate order cancelling the bail bond of the accused deprived accused of his right to liberty, even if temporarily. This is not excusable. A judge should administer his office with due regard to the integrity of the system of the law

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[11] *Contreras vs. Solis,* 260 SCRA 572.

[12] *Guillermo vs. Reyes, Jr., supra.*

[13] *Abarquez vs. Rebosura,* 285 SCRA 109.

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itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law.[14]

WHEREFORE, finding the recommendation of the Court Administrator to be well-taken, respondent Judge Orlando D. Beltran of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 2 is hereby *FINED* in the amount of Two Thousand (₱2,000.00) Pesos for grave abuse of authority, with a stern *WARNING* that a repetition of the same or similar act shall be dealt with more severely by this Court.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and S*andoval-Gutierrez, JJ.,* concur.

SECOND DIVISION

[A.M. No. RTJ-94-1131. August 20, 2001]

MIGUEL ARGEL, *complainant, vs.* **JUDGE HERMINIA M. PASCUA, RTC-Br. 25, Vigan, Ilocos Sur,** *respondent.*

SYNOPSIS

Complainant was acquitted by respondent judge from the crime of murder in a decision dated July 22, 1993. On August 19, 1993, however, respondent reversed the decision and convicted complainant. Respondent explained that she initially acquitted complainant on the ground that there was no witness who positively identified complainant as the perpetrator of the crime. But upon confirming that there was such witness, respondent reversed her earlier decision and convicted complainant.

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[14] *Conducto vs. Monzon,* 291 SCRA 619.