Republic of the Philippines
Supreme Court
Manila

**THIRD DIVISION**

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| **ALLEN C. PADUA and EMELITA F. PIMENTEL,** | **G.R. No. 220913** |
| Petitioners, | **Present:** |
| *- versus -* | PERALTA, *J.*, *Chairperson*, LEONEN, REYES, A., JR., HERNANDO, and CARANDANG,* *JJ.* |
| **PEOPLE OF THE PHILIPPINES, FAMILY CHOICE GRAINS PROCESSING CENTER, INC., and GOLDEN SEASON GRAINS CENTER, INC.,** | **Promulgated:** |
| Respondents. | February 4, 2019 |

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**D E C I S I O N**

**PERALTA, *J.*:**

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated July 22, 2015 and Resolution[2] dated October 12, 2015 of the Court of Appeals in CA-G.R. SP No. 140567.

The facts are as follows:

Juanito A. Tio (*Tio*), in his capacity as representative of Family Choice Grains Processing Center of Cabatuan, Isabela filed a complaint for estafa against now petitioners Allen Padua (*Padua*), Emelita Pimentel (*Pimentel*)

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* Designated as additional member per Special Order No. 2624 dated November 28, 2018.

1 Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Nina G. Antonio-Valenzuela and Melchor Q.C. Sadang, concurring; *rollo*, pp. 9-21.

2 *Id.* at 23-24.

and Dante Frialde (*Frialde*),[3] as officials of Nviro Filipino Corporation (*Nviro*).[4]

In the complaint, Tio accused petitioners of falsely claiming that they are in the business of power plant construction when their actual and authorized line of business only involves manufacturing and selling fertilizer. Tio claimed that petitioners obtained One Hundred Thirty Thousand Euros (€130,000.00) from Family Choice allegedly for "expat fees," yet failed to remit the same to their supplier. Tio also alleged that petitioners failed to make good of their promises to deliver the appropriate equipments and even demanded an additional ₱23,618,401.00 despite being paid nearly ninety percent (90%) of the agreed construction price. As a result of petitioners' swindling scheme, Tio claimed that Family Choice suffered actual damages amounting to ₱16,388,253.90 as of May 22, 2010.

Petitioners, on the other hand, denied the allegations against them. They claimed that said allegations were absurd, defamatory, libelous and wanting of any credible evidence. They alleged that the filing of the criminal cases was untimely and premature, and in violation of the provisions of their Memorandum of Agreement. They asserted that they never claimed to be in the business of power plant construction, and that they are only the accredited agent/developer of K.E.M A/S Energy and Environmental Technology Company of Denmark. While they admitted to have delivered a second-hand/incompatible equipment induction motor, they explained that the same was not due to the fault of Nviro but of the local supplier. Nviro asserted that the construction project was done in good faith and that they tried to complete the project in accordance with the terms and conditions of the construction contract.

In a Resolution[5] dated July 25, 2010, Assistant Provincial Prosecutor Ferdimar A. Garcia found all the elements of the crime of estafa under paragraph 2(a), Article 315 of the Revised Penal Code (*RPC*) to be present, thus, the filing of four (4) separate Informations against petitioners for estafa under Article 315 were recommended.

Subsequently, four (4) Informations dated July 30, 2010 docketed as Criminal Cases Nos. 7012, 7013, 7014 and 7016, respectively, all for estafa under paragraph 2(a), Article 315 of the RPC were filed against petitioners Padua, Pimentel and Frialde before the Regional Trial Court (*RTC*) of Cauayan City, Isabela, to wit:

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3 Allegedly deceased as per Omnibus Motion *Ex-Abundante Ad Cautelam* dated August 26, 2014, thus, the petitioners here are only Allen Padua and Emelita Pimentel.

4 *Rollo*, pp. 79-92.

5 *Id.* at 115-146.

**Criminal Case No. 7012**

That from May 2007 up to the 22nd day of May 2010, in the Municipality of Cabatuan[,] [P]rovince of Isabela, Philippines, and within the jurisdiction of the Honorable Court, the said accused[,] by acting as key officers of NVIRO FILIPINO CORPORATION, namely: ALLEN PADUA, EMELITA PIMENTEL and DANTE FRIALDE, confederating, conspiring and mutually helping one another, by means of false pretense[,] deceit and with intent to defraud[,] willfully[,] unlawfully and feloniously entered [into] contract with FAMILY CHOICE GRAINS PROCESSING CENTER[,] represented by JUANITO A. TIO, for the construction of 2.0 MW Rice Hull-Fired Cogen Bio Mass Power Plant, to be known as Family Choice Cogen Biomass Power Corporation, and by virtue of the said agreement[,] the herein accused collected and received the amount of One Hundred Thirty Thousand Euros (Euro 130,000.00) or equivalent [to] Eight Million Eight Hundred Forty Thousand Pesos (Php8,840,000.00) as "Expat Fees" to be remitted or intended for payment to K.E.M A/S Energy and Environmental Technology Com (Technology Supplier) knowing fully that at the time they (sic) collected under false pretense and deceit when they made various representation as duly authorized agent of KEM with full authority to disburse the said amount, when in truth and in fact the herein accused as key officers of NVIRO [are] not authorized or accredited agent. That for fear that some of the components of the intended power plant would not be install[ed] in the power plant under construction[,] Family Choice paid the accused the amount of One Hundred Thirty Thousand Euros (Euro 130,000.00) or equivalent [to] Eight Million Eight Hundred Forty Thousand Pesos (Php8,840,000.00) as "Expat Fees," the said amount was not remitted or was not credited in the account of KEM which is suppose[d] to collect the said "Expat Fees" to the damage and prejudice of complainant FAMILY CHOICE in the amount of One Hundred Thirty Thousand Euros (Euro 130,000.00) or equivalent [to] Eight Million Eight Hundred Forty Thousand Pesos (Php8,840,000.00).

**CONTRARY TO LAW.**[6]

**Criminal Case No. 7013**

That from January 2006 up to the 22nd day of May 2010, in the Municipality of Cabatuan[,] [P]rovince of Isabela, Philippines, and within the jurisdiction of the Honorable Court, the said accused[,] by acting as key officers of NVIRO FILIPINO CORPORATION, namely: ALLEN PADUA, EMELITA PIMENTEL and DANTE FRIALDE, confederating, conspiring and mutually helping one another, by means of false pretense[,] deceit and with intent to defraud[,] willfully, unlawfully and feloniously entered [into] contract with FAMILY CHOICE GRAINS PROCESSING CENTER[,] represented by JUANITO A. TIO, for the construction of 2.0 MW Rice Hull-Fired Cogen Bio Mass Power Plant, to be known as Family Choice Cogen Biomass Power Corporation, knowing fully that at the time they entered into contract with Family Choice that it has no authority under its Articles of Incorporation to enter and or venture in the business of construction of power plant. That by falsely pretending themselves to have the qualification, credit and business and that they have the technical and industrial expertise to construct the said project[,] complainant was induced

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6 *Id.* at 147.

to enter and execute a contract with the herein accused when in truth and in [fact] they have no capacity to construct the power plant covered by a Feasibility Study presented to Family Choice. That from the time of the commencement of the construction of the power plant[,] Family Choice has already incurred the amount of Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty-Three [Pesos] and Ninety Centavos (Php6,648,253.90), this is (sic) in spite of the numerous demands for the completion and turn[-]over [of] the Power Plant[,] considering that the project [is] on a "turn key" basis, to the damage and prejudice of complainant Family Choice in the amount of to (sic) Six Million Six Hundred Forty- Eight Thousand Two Hundred Fifty-Three [Pesos] and Ninety Centavos (Php6,648,253.90).

**CONTRARY TO LAW.**[7]

**Criminal Case No. 7014**

That from July 2009 and thereafter, in the Municipality of Cabatuan[,] [P]rovince of Isabela, Philippines, and within the jurisdiction of the Honorable Court, the said accused[,] by acting as key officers of NVIRO FILIPINO CORPORATION, namely: ALLEN PADUA, EMELITA PIMENTEL and DANTE FRIALDE, confederating, conspiring and mutually helping one another, by means of false pretense[,] deceit and with intent to defraud[,] willfully, unlawfully and feloniously[,] after receiving payment[s,] agreed and promised to install a complete set of condenser with its necessary pumps and pipes required in the operation of 2.0 MW Rice Hull-Fired Cogen Bio Mass Power Plant, which is the subject of an on-going construction project being undertaken by NVIRO FILIPINO CORPORATION for FAMILY GRAINS PROCESSING CENTER[,] represented by JUANITO A. TIO. That by falsely pretending themselves to have the qualification, credit and business and that they have the technical and industrial expertise to deliver and install the said complete set of condenser with pumps and pipes necessary for the completion of the project[,] complainant was induced to enter and execute a contract with the herein accused when in truth and in fact[,] they have no capacity to deliver as they failed to deliver and install the condenser amounting to Two Million Six Hundred [Thousand] Pesos (Php2,600,000.00)[,] the price quoted by the herein accused, to the damage and prejudice of the complainant FAMILY Choice in the amount of Two Million Six Hundred Thousand Pesos (Php2,600,000.00).

**CONTRARY TO LAW.** [8]

**Criminal Case No. 7016**

That from January 2006 up to the 22nd day of May 2010, in the Municipality of Luna, [P]rovince of Isabela, Philippines, and within the jurisdiction of the Honorable Court, the said accused[,] by acting as key officers of NVIRO FILIPINO CORPORATION, namely: ALLEN PADUA, EMELITA PIMENTEL and DANTE FRIALDE, confederating, conspiring and mutually helping one another, by means of false pretense[,] deceit and with intent to defraud[,] willfully, unlawfully and feloniously entered [into] contract with GOLDEN SEASON GRAINS CENTER[,] represented by [LEANA T. TAN], for the construction of 2.0 MW Rice

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7 *Id. at* 149.
8 *Id.* at 151.

> Hull-Fired Cogen Bio Mass Power Plant, to be known as GOLDEN SEASON Cogen Biomass Power Corporation, knowing fully that at the time they entered into the contract with Golden Season that it has no authority under its Articles of Incorporation to enter and or venture in the business of construction of power plant. That by falsely pretending themselves to have the qualification, credit and business and that they have the technical and industrial expertise to construct the said project[,] complainant was induced to enter and execute a contract with the herein accused when in truth and in [fact][,] they have no capacity to construct the power plant covered by a Feasibility Study presented to Golden Season. That from the time of the commencement of the construction of the power plant[,] Golden Season has already incurred the amount of Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty[-]Three [Pesos] and Ninety Centavos (Php6,648,253.90), this is (sic) in spite of the numerous demands for the completion and turn[-]over [of] the Power Plant considering that the project [is] on a "turn key" basis, to the damage and prejudice of complainant Golden Season in the amount of Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty-Three [Pesos] and Ninety Centavos (Php6,648,253.90).
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> **CONTRARY TO LAW.**[9]

Consequently, a Warrant of Arrest[10] dated August 6, 2010 was issued by Branch 20, RTC of Cauayan City, Isabela, in said Criminal Cases Nos. 7012, 7013, 7014 and 7016.

Four years after, or on July 21, 2014, petitioners Padua and Pimentel filed an Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail)[11] wherein they alleged that their co-accused Frialde had died. They also alleged that it was only recently that they were able to find a lawyer who explained to them that they are entitled to bail under the law and under existing jurisprudence.

Petitioners asserted that the Informations only charged them with estafa under paragraph 2(a), Article 315 of the RPC. They claimed that the Informations failed to allege that the crimes charged against them had been amended by Presidential Decree No. 1689,[12] hence, the penalty for estafa under paragraph 2(a), Article 315 of the RPC shall be in the range of *reclusion temporal*, as maximum. They averred that the Informations, likewise, failed to allege any aggravating circumstance which is necessary for the purpose of imposing the penalty of *reclusion perpetua*. Thus, petitioners averred that the imposable penalty cannot exceed twenty (20) years of imprisonment which is the maximum of *reclusion temporal*, therefore, the charges in the Informations are bailable, and that they are entitled to bail for their provisional liberty.

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9 *Id.* at 153.

10 *Id.* at 155.

11 *Id.* at 156-166.

12 "*Increasing the Penalty for Certain Forms of Swindling or Estafa*," Presidential Decree No. 1689, April 6, 1980.

On August 4, 2014, the trial court denied petitioners' omnibus motion, the pertinent portion of which reads:

> Records show[,] however[,] that the accused continue to be at large, thus, the Court has no jurisdiction over their persons as they have not surrendered nor have been arrested[,] as such[,] the accused have no legal standing in Court and they are not entitled to seek relief from the Court.
>
> WHEREFORE, in view of the foregoing, the Court hereby resolves to deny their motion due to lack of merit.
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> SO ORDERED.[13]

Petitioners filed a Joint Motion for Reconsideration[14] dated August 26, 2014. The trial court then directed the Office of the Provincial Prosecutor of Isabela in Ilagan City, Isabela and/or Cauayan City, Isabela, to file its Comment on/or Opposition to the Joint Motion for Reconsideration. Petitioners filed an Urgent *Ex-Parte* Motion for Early Resolution dated March 9, 2015.

In an Order[15] dated March 19, 2015, the trial court denied the Joint motion for reconsideration, and we quote in full, to wit:

> This resolves the Motion for Reconsideration of the Order dated August 4, 2014 filed by accused Allen Padua and Emelita Pimentel through counsel, Atty. Miguel D. Larida, denying the omnibus motion ex-abundante ad cautelam (to quash the warrant of arrest and to fix bail) on the ground that the Court has no jurisdiction over their persons as they have not surrendered nor have been arrested. As such[,] the accused have no legal standing in Court and they are not entitled to seek relief from the Court. A copy thereof was furnished to the Office of the Provincial Prosecutor, Ilagan City, Isabela.
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> In its motion, it was argued that the accused is entitled to bail as the penalty for the crime charged is not punishable by *reclusion perpetua.* The Court notes that while this may be true the proper remedy of the accused should have been to file a verified petition to fix bail and not a mere motion. Moreover, records show that the Information was filed on August 2, 2010 and a Hold Departure Order was issued on August 25, 2010. To date, all the accused continue to be at large. The grounds relied upon by the accused have already been passed upon by Court *a quo*. This Court finds no new, substantial arguments to warrant a reversal or modification thereof.
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> WHEREFORE, in view of the foregoing, the Court hereby resolves to deny the motion for reconsideration due to lack of merit.
>
> SO ORDERED.

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13 *Rollo,* p. 178.
14 *Id.* at 179-188.
15 *Id.* at 192.

Thus, before the Court of Appeals, petitioners filed a Petition[16] for *certiorari* alleging grave abuse of discretion amounting to lack of jurisdiction when the court *a quo* denied their Omnibus Motion *Ex-Abundante Ad Cautelam* and Motion for Reconsideration.

In its assailed Decision[17] dated July 22, 2015, the Court of Appeals denied the petition for *certiorari*, and affirmed the ruling of the court *a quo*, to wit:

> As aptly found by public respondent in the first assailed Order dated 04 August 2014, petitioners are still at large, and have not surrendered nor been arrested. Thus, before public respondent can act upon petitioners' application to fix bail and grant the same, they must submit themselves first to the custody of the law signifying restraint on their person or custody over their body, which is accomplished either by arrest or their voluntary surrender.
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> x x x x
>
> A person applying for admission to bail must be in the custody of the law or otherwise deprived of his liberty. (T)he purpose of bail is to secure one's release, and it would be incongruous to grant bail to one who is free. Here, despite the issuance of the Warrant of Arrest on 06 August 2010, the same remained unserved as petitioners appear to have gone into hiding without surrendering and submitting themselves to the custody of the law. They waited it out and filed, almost four (4) years after the issuance of the Warrant of Arrest, an Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail) dated 14 July 2014.
>
> Considering the foregoing disquisition, We find no necessity to pass upon the [other] matters raised by petitioners.
>
> **WHEREFORE,** premises considered, the Petition is DENIED. Costs against petitioners.
>
> **SO ORDERED.**[18]

Hence, this appeal, raising the lone issue of whether the Court of Appeals erred in affirming the Orders of the court *a quo* finding petitioners as not being entitled to bail despite being charged with bailable offenses.[19]

Petitioners maintain that being charged with estafa which is an offense punishable by *reclusion temporal*, they should be granted bail as a matter of right. They also asserted that they already submitted themselves to the jurisdiction of the court when they filed their Omnibus Motion *Ex-Abundante*

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16 *Id.* at 193-219.
17 *Id.* at 9-21.
18 *Id.* at 19-20.
19 *Id.* at 44.

*Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail) and, thus, there is no need to make personal appearance.[20]

Respondents, however, asserted that while petitioners were indeed charged with estafa under par. 2(a), Art. 315 of the RPC which is bailable, bail cannot still be granted to them who are at large. They claimed that under the law, accused must be in the custody of the law regardless of whether bail is a matter of right or discretion.

The petition has merit.

The right to bail is expressly afforded by Section 13, Article III (Bill of Rights) of the Constitution, to wit:

> 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 provided 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.

This constitutional provision is repeated in Section 7, Rule 114 of the Rules of Court, as follows:

> Section 7. *Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable.* — No 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 stage of the criminal prosecution.

The general rule, therefore, is that any person, before being convicted of any criminal offense, shall be bailable, unless he is charged with a capital offense, or with an offense punishable with *reclusion perpetua* or life imprisonment, and the evidence of his guilt is strong. Thus, from the moment an accused is placed under arrest, or is detained or restrained by the officers of the law, he can claim the guarantee of his provisional liberty under the Bill of Rights, and he retains his right to bail unless he is charged with a capital offense, or with an offense punishable with *reclusion perpetua* or life imprisonment, and the evidence of his guilt is strong.[21]

In the instant case, in four (4) Informations, petitioners were charged with estafa under paragraph 2(a),[22] Article 315 of the RPC. For **Criminal**

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20 *Id.* at 50-51.

21 *Id.* at 50.

22 Article 315. *Swindling (estafa).* Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

**Case No. 7012**, the alleged amount defrauded was One Hundred Thirty Thousand Euros (€130,000.00) or equivalent to Eight Million Eight Hundred Forty Thousand Pesos (₱8,840,000.00); for **Criminal Case No. 7013**, the alleged amount defrauded was Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty-Three Pesos and Ninety Centavos (₱6,648,253.90); for **Criminal Case No. 7014**, the alleged amount defrauded was Two Million Six Hundred Thousand Pesos (₱2,600,000.00); and for **Criminal Case No. 7016**, the alleged amount defrauded was Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty-Three Pesos and Ninety Centavos (₱6,648,253.90).

Before the passage of Republic Act No. (*R.A.*) 10951,[23] amending the penalty for estafa, Article 215 of the RPC imposes the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period if the amount is over ₱12,000.00 but does not exceed ₱22,000.00. If the amount swindled exceeds ₱22,000.00, the penalty shall be imposed in its maximum period, adding one year for each additional ₱10,000.00, but the total penalty which may be imposed shall not exceed 20 years.

With the amendment of Article 315 of the RPC, in view of the recent enactment of R.A. 10951,[24] the imposable penalty now for estafa is as follows:

> SEC. 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:
>
> ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:
>
> > "1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos

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*1st.* The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal,* as the case may be.

*2nd.* The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

*3rd.* The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

*4th.* By *arresto mayor* in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) **By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.**

[23] *An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed under the Revised Penal Code*, August 29, 2017.

[24] *Id.*

> (P4,400,000), and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Two million pesos (P2,000,000): but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.
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> "2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).
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> "3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).
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> "4th. By arresto *mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (P40.000) x x x." (Emphasis ours)

Here, applying paragraph 2(a),[25] Article 315 of the RPC, as amended by R.A. 10951 - in Criminal Case No. 7014, considering the amount allegedly defrauded by petitioners amounted to ₱2,600,000 which exceeded two million four hundred thousand pesos (₱2,400,000) but not more than ₱4,400,000.00, the imposable penalty will be *prision correccional* in its maximum period to *prision mayor* in its minimum period. In Criminal Case Nos. 7012, 7013 and 7016, where the amounts allegedly defrauded all exceeded ₱4,400,000.00, the imposable penalty shall be in its maximum period, adding one year for each additional Two million pesos (₱2,000,000.00). ***However, the law also provides that the total penalty which may be imposed shall not exceed twenty years.*** In such cases, and in connection with the accessory penalties which may be imposed, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

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[25] Article 315. *Swindling (estafa).* Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

*1st.* The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal,* as the case may be.

*2nd.* The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

*3rd.* The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

*4th.* By *arresto mayor* in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) **By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits**

Clearly, in the instant case, petitioners are entitled to bail as a matter of right as they have not been charged with a capital offense. Estafa, under Art. 315 of the RPC as amended by R.A. 10951, which petitioners have been charged with, has an imposable penalty of *reclusion temporal* in its maximum period, which is still bailable.

Respondents, however, posit that the right to bail, whether as a matter of right or discretion, is subject to the limitation that the person applying for admission to bail should be in the custody of the law, or otherwise deprived of his liberty. As bail is intended to obtain or secure one's provisional liberty, they claimed that it cannot be posted before custody over the accused has been acquired by the judicial authorities, either by his lawful arrest or voluntary surrender. Considering that petitioners have neither been arrested, nor have they surrendered, as in fact they remain to be at large, respondents claimed that they cannot be entitled to bail.

In *Miranda, et al. v. Tuliao*,[26] the Court pronounced that "custody of the law is required before the court can act upon the application for bail, but is not required for the adjudication of other reliefs sought by the defendant where the mere application therefor constitutes a waiver of the defense of lack of jurisdiction over the person of the accused."

Indeed, a person applying for admission to bail must be in the custody of the law or otherwise deprived of his liberty. A person who has not submitted himself to the jurisdiction of the court has no right to invoke the processes of that court.[27] However, applying also the same pronouncement in *Tuliao*, the Court also held therein that, "in adjudication of other reliefs sought by accused, it requires neither jurisdiction over the person of the accused, nor custody of law over the body of the person." Thus, except in applications for bail, it is not necessary for the court to first acquire jurisdiction over the person of the accused to dismiss the case or grant other relief.

In the instant case, there is no dispute that petitioners were at large when they filed, through counsel, their Omnibus Motion *Ex-Abundante Ad Cautelam* wherein they asked the court to quash the warrant of arrest and fix the amount of the bail bond for their provisional release pending trial. However, *albeit*, at large, it must be clarified that petitioners' Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail) is **not** an application for bail. This is where the instant case begs to differ because what petitioners filed was an Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail). They were neither applying for bail, nor were they posting bail.

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26 520 Phil. 907, 919 (2006).

27 *Pico v. Judge Combong, Jr.*, 289 Phil. 899, 902 (1992).

The subject Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail) is distinct and separate from an application for bail where custody of law is required. A motion to quash is a consequence of the fact that it is the very legality of the court process forcing the submission of the person of the accused that it is the very issue.[28] Its prayer is precisely for the avoidance of the jurisdiction of the court which is also as an exception to the rule that filing pleadings seeking affirmative relief constitutes voluntary appearance, and the consequent submission of one's person to the jurisdiction of the court.[29]

Thus, in filing the subject Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail), petitioners are questioning the court's jurisdiction with precaution and praying that the court fix the amount of bail because they believed that their right to bail is a matter of right, by operation of law. They are not applying for bail, therefore, custody of the law, or personal appearance is not required. To emphasize, custody of the law is required before the court can act upon the application for bail but it is not required for the adjudication of other reliefs sought by the accused, as in the instant omnibus motion to quash warrant of arrest and to fix bail.[30]

Indeed, in criminal cases, jurisdiction over the person of the accused is deemed waived by the accused when he files any pleading seeking an affirmative relief, except in cases when he invokes the special jurisdiction of the court by impugning such jurisdiction over his person. However, in narrow cases involving special appearances, an accused can invoke the processes of the court even though there is neither jurisdiction over the person nor custody of the law. Nevertheless, if a person invoking the special jurisdiction of the court applies for bail, he must first submit himself to the custody of the law.[31]

Furthermore, while we stand by the above pronouncements in *Tuliao*, there is a need to elucidate that insofar as the requirement that accused must be in the custody of the law for purposes of entitlement to bail, We must also distinguish, because bail is either a matter of right or of discretion.

The constitutional mandate is 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 be released on recognizance as may be provided by law.[32] However, bail may be

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28 *Miranda, et al. v. Tuliao, supra* note 26.

29 *Id.* at 922.

30 *Id.* at 919.

31 *Id.*

32 Section 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 provided 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. Article III Bill of Rights, 1987 Constitution of the Philippines.

a matter of right or judicial discretion. The accused has the right to bail if the offense charged is "not punishable by death, *reclusion perpetua* or life imprisonment" before conviction. However, if the accused is charged with an offense and the penalty of which is death, *reclusion perpetua,* or life imprisonment — "regardless of the stage of the criminal prosecution" — and when evidence of one's guilt is not strong, then the accused's prayer for bail is subject to the discretion of the trial court.[33]

Clearly, bail is a constitutional demandable right which only ceases to be so recognized when the evidence of guilt of the person charged with a crime that carries the penalty of *reclusion perpetua*, life imprisonment, or death is found to be strong.[34] Stated differently, bail is a matter of right when the offense charged is not punishable by *reclusion perpetua* or life imprisonment, or death.[35]

When the grant of bail is discretionary, the grant or denial of an application for bail is dependent on whether the evidence of guilt is strong which the lower court should determine in a hearing called for the purpose. The determination of whether the evidence of guilt is strong, in this regard, is a matter of judicial discretion. Judicial discretion in granting bail may indeed be exercised only after the evidence of guilt is submitted to the court during the bail hearing.[36] It is precisely for this reason why an accused must be in the custody of the law during an application for bail because where bail is a matter of discretion, judicial discretion may only be exercised during bail hearing. However, where bail is not a matter of discretion, as in fact it is a matter of right, no exercise of discretion is needed because the accused's right to bail is a matter of right, by operation of law. An accused must be granted bail if it is a matter of right.

Thus, an accused who is charged with an offense not punishable by *reclusion perpetua* or life imprisonment, as in this case, they must be admitted to bail as they are entitled to it as a matter of right. Here, considering that estafa is a bailable offense, petitioners no longer need to apply for bail as they are entitled to bail, by operation of law. Where bail is a matter of right, it is ministerial on the part of the trial judge to fix bail when no bail is recommended. To do otherwise, if We deny bail *albeit* it is a matter of right, We will effectively render nugatory the provisions of the law giving distinction where bail is a matter of right, or of discretion.

It must be emphasized anew that bail exists to ensure society's interest in having the accused answer to a criminal prosecution without unduly restricting his or her liberty and without ignoring the accused's right to be

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33 *People v. Escobar*, G.R. No. 214300, July 26, 2017, 833 SCRA 180, 196.

34 *Enrile v. Sandiganbayan (Third Division), et al.*, 789 Phil. 679, 700 (2016), Separate Concurring Opinion of Justice Arturo D. Brion.

35 *Leviste v. Court of Appeals, et al.*, 629 Phil. 587, 601 (2010).

36 *People v. Presiding Judge of the RTC of Muntinlupa City*, 475 Phil. 234, 244 (2004).

presumed innocent. It does not perform the function of preventing or licensing the commission of a crime. The notion that bail is required to punish a person accused of crime is, therefore, fundamentally misplaced. Indeed, the practice of admission to bail is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. The spirit of the procedure is rather to enable them to stay out of jail until a trial, with all the safeguards, has found and adjudged them guilty. Unless permitted this conditional privilege, the individuals wrongly accused could be punished by the period or imprisonment they undergo while awaiting trial, and even handicap them in consulting counsel, searching for evidence and witnesses, and preparing a defense. Hence, bail acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring his presence at trial.[37]

Admission to bail always involves the risk that the accused will take flight. This is the reason precisely why the probability or the improbability of flight is an important factor to be taken into consideration in granting or denying bail, even in capital cases. However, where bail is a matter of right, prior absconding and forfeiture is not excepted from such right, bail must be allowed irrespective of such circumstance. The existence of a high degree of probability that the accused will abscond confers upon the court no greater discretion than to increase the bond to such an amount as would reasonably tend to assure the presence of the defendant when it is wanted, such amount to be subject, of course, to the constitutional provision that "excessive bail shall not be required."[38] The recourse of the judge is to fix a higher amount of bail and not to deny the fixing of bail.[39]

To recapitulate, in the instant case, petitioners filed an Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail) wherein it is not required that petitioners be in the custody of the law, because the same is not an application for bail where custody of the law is required. Moreover, to reiterate, when bail is a matter of right, the fixing of bail is ministerial on the part of the trial judge even without the appearance of the accused. They must be admitted to bail as they are entitled to it as a matter of right. ***However, it must be further clarified that after the amount of bail has been fixed, petitioners, when posting the required bail, must be in the custody of the law. They must make their personal appearance in the posting of bail. It must be emphasized that bail, whether a matter of right or of discretion, cannot be posted before custody of the accused has been acquired by the judicial authorities either by his arrest or voluntary surrender, or personal appearance.*** This is so because if We allow the granting of bail to persons not in the custody of the law, it is foreseeable that many persons who can afford the bail will remain at large, and could elude being held to answer for the commission of the offense if ever he is proven

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37 *Enrile v. Sandiganbayan (Third Division), et al., supra* note 34.

38 See *Sy Guan v. Amparo*, 79 Phil. 670, 671 (1947); and *San Miguel v. Judge Maceda*, 549 Phil. 12, 19 (2007)

39 See *San Miguel v. Maceda, supra*, at 23.

guilty.[40] Furthermore, the continued absence of the accused can be taken against him since flight is indicative of guilt.[41]

**WHEREFORE**, the petition is **GRANTED.** The Decision dated July 22, 2015 and the Resolution dated October 12, 2015 of the Court of Appeals in CA-G.R. SP No. 140567 are **REVERSED.** The court *a quo* is **ORDERED** to **RESOLVE** the Motion to Quash with reasonable dispatch and to **FIX** an amount of bail following the guidelines in Section 9, Rule 114 of the Rules on Criminal Procedure, as amended.

**SO ORDERED.**

**DIOSDADO M. PERALTA**
Associate Justice

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40 *Miranda, et al. v. Tuliao, supra* note 26, at 923.
41 *Id.*

**WE CONCUR:**

**MARVIC M.V.F. LEONEN**
Associate Justice

**ANDRES B. REYES, JR.**
Associate Justice

**RAMON PAUL L. HERNANDO**
Associate Justice

**ROSMARI D. CARANDANG**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**DIOSDADO M. PERALTA**
Associate Justice
Chairperson, Third Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**LUCAS P. BERSAMIN**
Chief Justice