



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

THIRD DIVISION

CERTIFIED TRUE COPY:

ALLEN DENNISE PULMA
CLERK OF COURT III
THIRD DIVISION

PEOPLE OF THE PHILIPPINES, **SB-16-CRM-0049**
Plaintiff, For: Theft of Minerals
(Sec. 103, R.A. No. 7942)

Present

- versus -

AVELINO J. GUNGOB, SR.,
ET AL.,

Accused.

CABOTAJE-TANG, P.J.,
Chairperson
FERNANDEZ, J. and
MIRANDA, J.*

Promulgated:

APRIL 21, 2016

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RESOLUTION

FERNANDEZ, J.

This resolves the *Appearance With Motion for Judicial Determination of Probable Cause*¹ filed by accused Avelino J. Gungob, Sr.

In his motion, accused Gungob prays that this Court determine the existence of probable cause, and that the present case be dismissed in the event that the Court finds no probable cause against him.

In its *Comment/Opposition [To accused Gungob's Motion for Judicial Determination of Probable Cause]*,² the prosecution counters that:

*As per Administrative Order No. 094-2016 dated March 31, 2016

¹ Dated February 2, 2016; pp. 105-121, Record

² Dated February 18, 2016; pp. 139-149, Record

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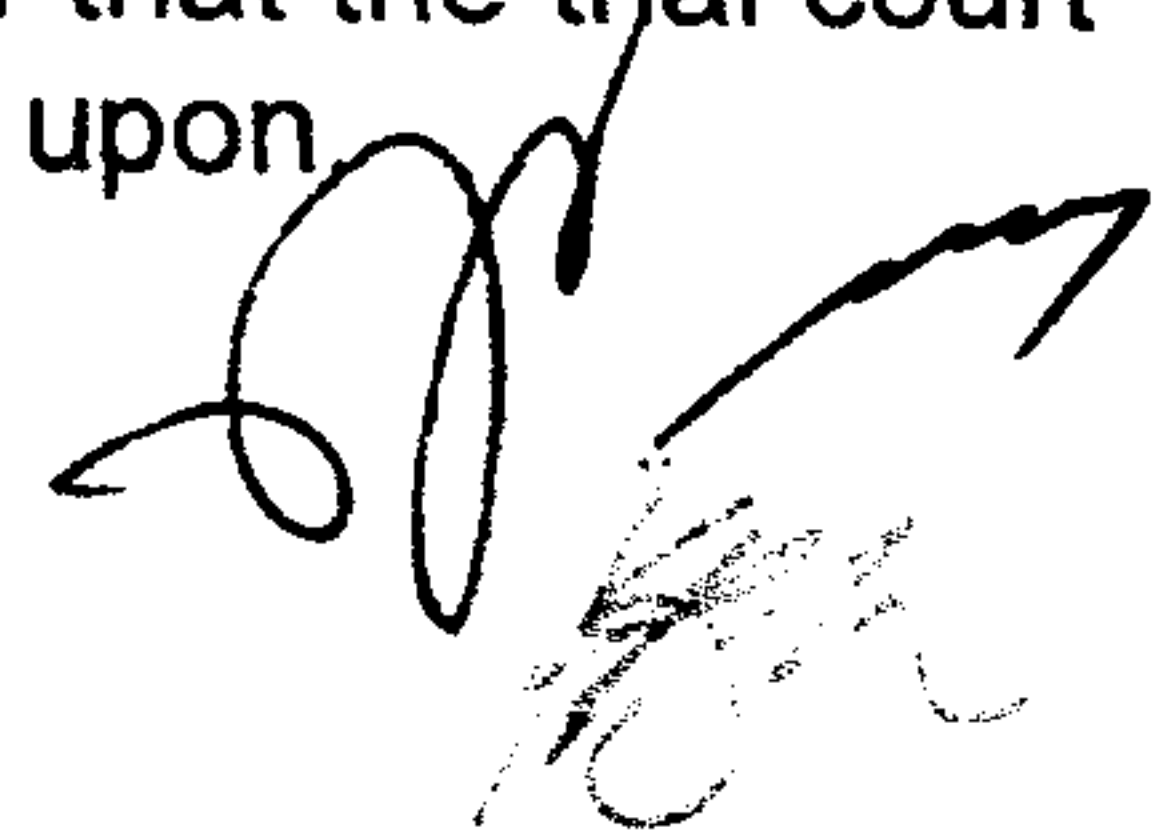
- a. The filing of a motion for judicial determination of probable cause is a mere superfluity. The Court is duty-bound to determine the existence of probable cause for the purpose of issuing a warrant of arrest.
- b. The issues raised by accused Gungob are evidentiary in nature, which are better ventilated in the trial on the merits.
- c. There is sufficient basis to support the finding of probable cause to indict the accused and hold them for trial.

In his *Reply [To Plaintiff's "Comment/Opposition" dated 4 March 2016]* (sic),³ accused Gungob contends that the filing of a motion for judicial determination of probable cause, which is *ex-parte* in character, is allowed by the Rules. He also argues that the issues he raised in his motion are not evidentiary in nature, and that the finding of probable cause to indict him and hold him for trial has no basis.

THE COURT'S RULING

The Supreme Court differentiated the two kinds of determination of probable cause in *People v. Castillo and Mejia*.⁴ To wit:

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.



³ Dated March 14, 2016; pp. 176-180, Record

⁴ G.R. No. 171188, June 19, 2009

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The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.

Verily, the Rules do not prohibit the filing of a motion for judicial determination of probable cause. However, the filing of such motion is a mere superfluity. In *Leviste v. Alameda*,⁵ it was held:

To move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence. In fact, the task of the presiding judge when the Information is filed with the court is *first* and *foremost* to determine the existence or non-existence of probable cause for the arrest of the accused.

Hence, the Court will determine the existence of probable cause. In the determination of the same, the ruling of the Supreme Court in *Allado v. Diokno*⁶ is instructive. To wit:

Accordingly, before issuing a warrant of arrest, the judge must satisfy himself that based on the evidence submitted there is sufficient proof that a crime has been committed and that the person to be arrested is probably guilty thereof. x x x

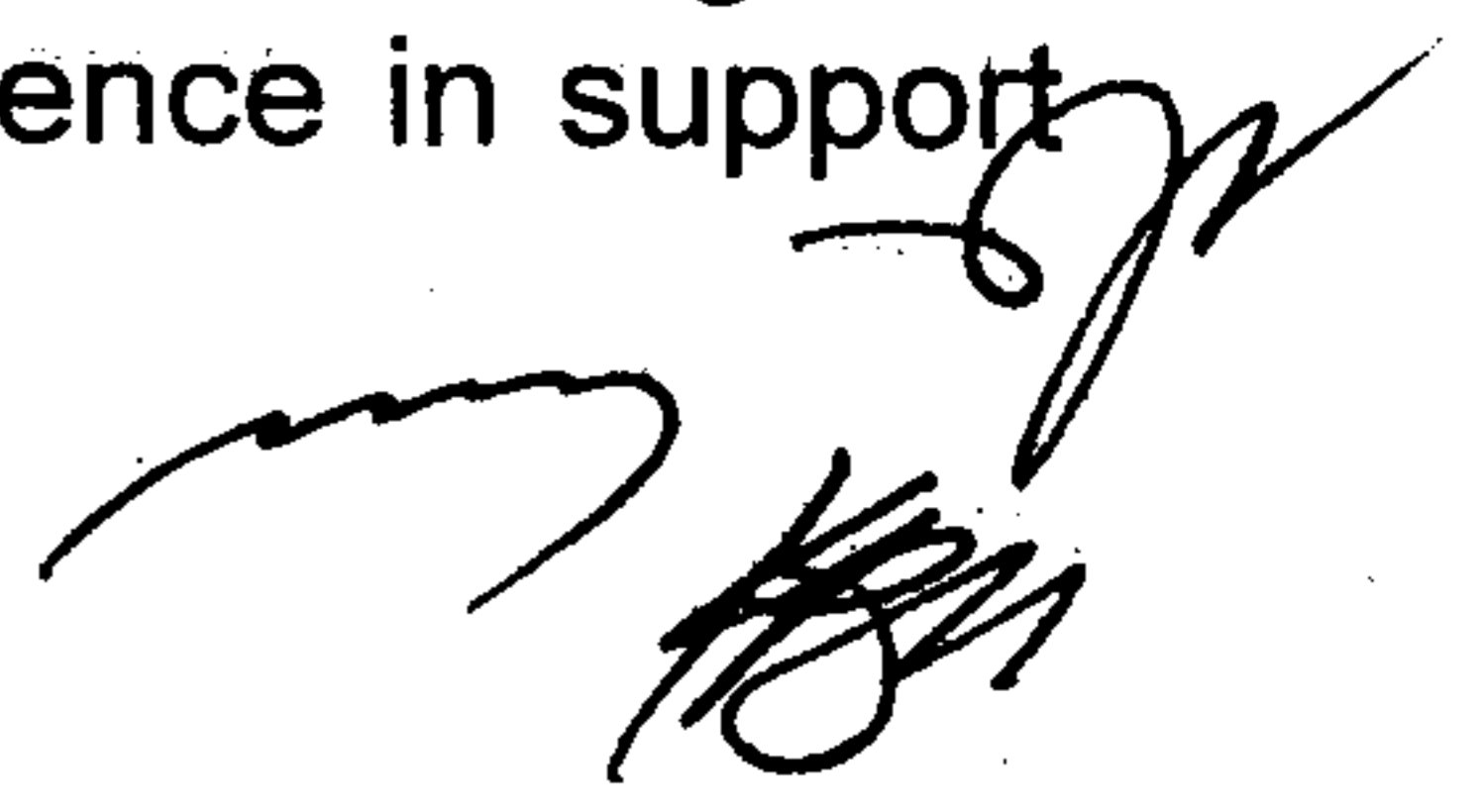
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Clearly, probable cause may not be established simply by showing that a trial judge subjectively believes that he has good grounds for his action. Good faith is not enough. If subjective good faith alone were the test, the constitutional protection would be demeaned and the people would be "secure in their persons, houses, papers and effects" only in the fallible discretion of the judge. On the contrary, the probable cause test is an objective one, for in order that there be probable cause the facts and circumstances must be such as would warrant a belief by a reasonably discreet and prudent man that the accused is guilty of the crime which has just been committed. x x x

After personally perusing the Information and evaluating the Resolution of the Office of the Ombudsman, the evidence in support

⁵ G.R. No. 182677, August 3, 2010

⁶ G.R. No. 113630, May 5, 1994



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thereof and the records of the preliminary investigation attached thereto, it appears that sufficient grounds exist for the finding of probable cause for the purpose of issuing warrants of arrest against the accused.

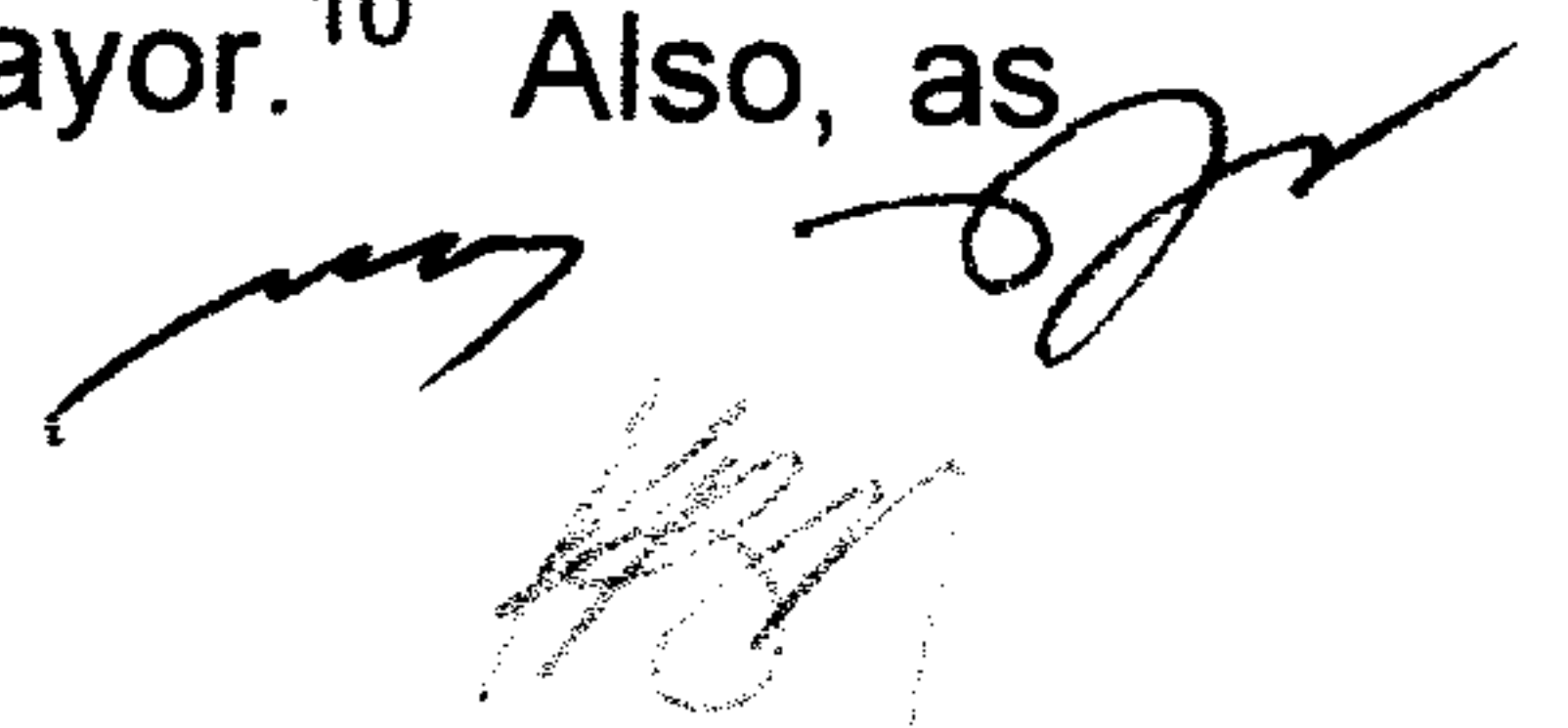
Sec. 103 of Republic Act No. 7942 (R.A. No. 7942), otherwise known as the Philippine Mining Act of 1995, provides:

**Section 103
Theft of Minerals**

Any person extracting minerals and disposing the same without a mining agreement, lease, permit, license, or steals minerals or ores or the products thereof from mines or mills or processing plants, shall, upon conviction, be imprisoned from six (6) months to six (6) years or pay a fine from Ten thousand pesos (P10,000.00) to Twenty thousand pesos (P20,000.00) or both, at the discretion of the appropriate court. In addition, he shall be liable to pay damages and compensation for the minerals removed, extracted, and disposed of. In the case of associations, partnerships, or corporations, the president and each of the directors thereof shall be responsible for the acts committed by such associations, corporation, or partnership.

The *Joint Affidavit*⁷ of accused Capao, Dayon, Gerundio, Comesos, Yray and Mangilaya; the *Counter-Affidavit*⁸ of accused Gungob; and the *Joint Counter-Affidavit*⁹ of the accused show their respective participation in the acts charged. It appears that upon the instructions of accused Gungob, the other accused went to Barangay Garing and operated heavy equipment owned by the municipality to load diorite into dump trucks. The said dump trucks were to transport the diorite to the site of the municipality's Government Center Project.

Furthermore, it appears that no permit for the extraction of diorite or limestone materials from Barangay Garing was issued by the Provincial Governor's Office or the Office of the Provincial Environment and Natural Resources to the Municipal Government of Consolacion or to accused Gungob, as Municipal Mayor.¹⁰ Also, as



⁷ Dated November 27, 2009; pp. 28-30, Record

⁸ Dated March 16, 2010; pp. 40-44, Record

⁹ Dated April 16, 2010; pp. 77-79, Record

¹⁰ p. 33, Record (*Certification* dated November 29, 2009); p. 34, Record (*Certification* dated November 23, 2009)

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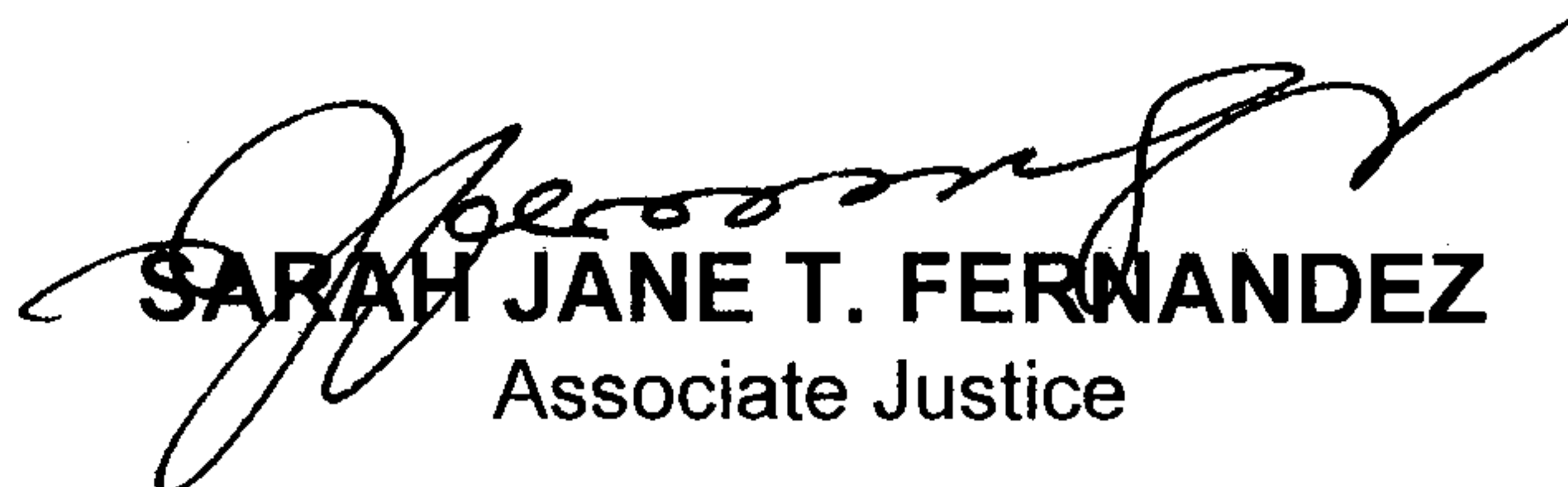
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stated in the *Counter-Affidavit* of accused Gungob, applications for a permit were filed but no permit was granted.¹¹

The Court finds that there is probable cause to issue warrants of arrest against the accused. However, insofar as accused Gungob is concerned, the issuance of the same is no longer necessary, considering that he had already posted his bail bond and was allowed provisional liberty.¹²

WHEREFORE, the motion of accused Gungob is hereby **NOTED**. Let warrants of arrest be issued against accused **GLECERIO GALO, LEONARDO C. CAPAO, JOEBOY C. DAYON, JUANITO T. GERUNDIO, BEDA I. COMESO, NICARTER J. YRAY** and **DIONITO C. MANGILAYA**.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice

WE CONCUR:


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson


KARL B. MIRANDA
Associate Justice

¹¹ p. 43, Record (p. 4, *Counter-Affidavit* dated March 16, 2010)

¹² p. 160, Record (*Order* dated March 16, 2016)