



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on July 17, 2017.

Present:

ALEXANDER G. GESMUNDO ----- Chairperson
MA. THERESA DOLORES C. GOMEZ-ESTOESTA ---- Associate Justice
ZALDY V. TRESPESES ----- Associate Justice

The following resolution was adopted:

CRIMINAL CASES NO. SB-16-CRM-0841 to 0848

PEOPLE v. JORGE V. SEGOVIA, et al.

Before the Court are the following:

1. Accused PS/Supt. Allan C. Nobleza's "URGENT MOTION TO LIFT HOLD DEPARTURE ORDER" dated April 18, 2017;
2. The Prosecution's "OPPOSITION RE: ACCUSED PS/SUPT. ALLAN C. NOBLEZA'S MOTION TO LIFT HOLD DEPARTURE ORDER" dated April 24, 2017;
3. Accused PS/Supt. Allan C. Nobleza's "REPLY TO THE OPPOSITION (Re: Urgent Motion to Lift Hold Departure Order)" dated April 26, 2017; and
4. The DILG's "COMMENT" dated June 30, 2017, filed by its Officer-in-Charge, Catalino S. Quy.

Before this Court is accused Nobleza's *Urgent Motion to Lift Hold Departure Order*,¹ wherein he seeks to be allowed to travel to Islamabad to discharge his duties as Philippine Police Attaché to the Philippine Embassy therein until the end of his tour of duty on November 11, 2018. He anchors his request on his constitutional right to travel, and avers that the instances warranting the restriction of his right to travel are unavailing; in fact, to restrict

¹ *Records*, Vol. 3, pp. 60-106

such right could even impair the security of the Philippine Embassy and Filipinos in Pakistan.

In his *Motion*, accused Nobleza recites his residence and office address in Pakistan, guarantees that he is not a flight risk, and undertakes to return to the country whenever directed by this Court.

The Prosecution opposed Nobleza's *Motion*,² submitting that the Constitution allows the curtailment of the right to travel; that an HDO may only be lifted only upon acquittal of the accused or dismissal of the case; and that accused Nobleza can always ask this Court for authority to travel upon good cause and subject to certain conditions.

In his *Reply*,³ accused Nobleza added that the lifting of the HDO would better serve the country's national interest by avoiding delays in his departures to Pakistan. He also addressed this Court's observation on Annex "2" of the motion regarding the existence of an alternate for him as Police Attaché, clarifying that there is no such position as "Alternate Police Attaché"; PS/Supt. Ferdinand M. Garay was merely an alternate *nominee* for accused Nobleza, but he has already been appointed to the position.

In response to this Court's request,⁴ the DILG, through its Officer-in-charge, manifested⁵ that it was not interposing any objection to the lifting of the hold-departure order, thus:

3. At the outset, the Office of the SILG wishes to inform this Honourable Court that it is not interposing any objection to the lifting of the HDO against PS/Supt. Nobleza, or in the alternative, the granting of authority or permission in favour of the movant to leave the country in order to address his public duty as a police officer. His detail as police attaché is a valid personnel movement recognized and permitted under existing civil service law, rules and regulations and presumed carried out in the exigency of public service;

4. Let it be stated that as Philippine Police Attaché, movant Nobleza has been constituted to perform an important and delicate public duty and function. Under Section 7(g) of Memorandum Circular (MC) No. 2016-005, the police attaché has police and diplomatic duties broken down as follows:

X X X

The foregoing enumeration, beyond cavil, underscores the necessity of PS/Supt. Nobleza's return to his post at the Philippine Embassy in Islamabad, Pakistan, where he should have already been there after his vacation or stay here in the Philippines. The void left by his continued absence as police attaché could compromise the interest of our national security, public safety or public health precisely because his qualifications which landed him the post are promptly needed to ensure that the security and safety of the Philippine Embassy personnel and Filipino citizens in

² *Opposition* dated April 24, 2017, *Id.*, pp. 211-214

³ *Id.*, pp. 216-218

⁴ *Resolution* dated May 29, 2017, *Id.*, pp. 298-299

⁵ *Comment* dated June 30, 2017, *Id.*, pp. 372-391

Pakistan, as well as the gathering of information there considered of strategic importance to national security are not impaired.

5. Moreover, the guidelines in the preceding MC contain built-in guarantees and safety clauses that will at least ensure if not totally rule out PS/Supt. Nobleza's not being a flight risk. In Section 7(l) in relation to 7(m) thereof, no Office of the Police Attaché (OPA) personnel is allowed to leave or engage in unnecessary travel outside the country of assignment/accreditation without prior approval/ clearance from the Home Office (HO). Apropos, any OPA personnel found to have violated this prohibition is subjected to administrative sanctions which could either be in the form of suspension or removal from police service in accordance with existing policies and regulations governing the PNP. If only for these ratiocinations, the undersigned as OIC of the DILG interposes no objection to movant's request that he be allowed to travel to the Philippine Embassy in Islamabad, Pakistan. (underscoring supplied)

Accused Nobleza's *Motion* is grounded on Section 6, Article III of the Constitution. He claims that there is no reason to restrict his freedom to travel as going to Pakistan to discharge his official duties as Philippine Police Attaché therein would hardly impair the interests of national security, public safety or public health.

The Supreme Court, in *Silverio v. CA, et al.*⁶ explained Section 6, Article III of the 1987 Constitution in this wise:

Petitioner takes the posture, however, that while the 1987 Constitution recognizes the power of the Courts to curtail the liberty of abode within the limits prescribed by law, it restricts the allowable impairment of the right to travel only on grounds of interest of national security, public safety or public health, as compared to the provisions on freedom of movement in the 1935 and 1973 Constitutions.

Under the 1935 Constitution, the liberty of abode and of travel were treated under one provision. Article III, Section 1(4) thereof reads:

The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired.

The 1973 Constitution altered the 1935 text by explicitly including the liberty of travel, thus:

The liberty of abode and of travel shall not be impaired except upon lawful order of the court or when necessary in the interest of national security, public safety, or public health (Article IV, Section 5).

The 1987 Constitution has split the two freedoms into two distinct sentences and treats them differently, to wit:

Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

Petitioner thus theorizes that under the 1987 Constitution, Courts can impair the right to travel only on the grounds of "national security, public safety, or public health."

⁶ G.R. No. 94284, April 8, 1991, 195 SCRA 760

The submission is not well taken.

Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without Court Order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of "national security, public safety, or public health" and "as may be provided by law," a limitive phrase which did not appear in the 1973 text (The Constitution, Bernas, Joaquin G., S.J., Vol. I, First Edition, 1987, p. 263). Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party (See *Salonga vs. Hermoso & Travel Processing Center*, No. 53622, 25 April 1980, 97 SCRA 121).

Article III, Section 6 of the 1987 Constitution should by no means be construed as delimiting the inherent power of the Courts to use all means necessary to carry their orders into effect in criminal cases pending before them. When by law jurisdiction is conferred on a Court or judicial officer, all auxiliary writs, process and other means necessary to carry it into effect may be employed by such Court or officer (Rule 135, Section 6, Rules of Court). (emphases supplied)

The rule laid down by the Supreme Court is that a person facing a criminal indictment and provisionally released on bail does not have an unrestricted right to travel, the reason being that a person's right to travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice.⁷ A court has the power to prohibit a person admitted to bail from leaving the Philippines. This is a necessary consequence of the nature and function of a bail bond.⁸

While accused Nobleza may have been appointed as Philippine Police Attaché to Pakistan, the fact remains that he has pending cases before this Court. The Hold Departure Order issued against him is valid for five (5) years from its issuance⁹ on November 3, 2016,¹⁰ or up to **November 3, 2021**, unless sooner terminated. Meanwhile, accused Nobleza's tour of duty ends on **November 11, 2018**. Certainly, accused Nobleza's actions up to the end of his tour of duty and during the pendency of these cases, which may include travelling to other countries, will not all be done in his capacity as Police Attaché.

The DILG has interposed no objection to the lifting of the Hold Departure Order for purposes of allowing accused Nobleza to continue his post as Philippine Police Attaché in Pakistan. This Court, in deference to said appointment and in consideration of the crucial duty in the hands of accused Nobleza, **temporarily lifts** the Hold Departure Order against accused Nobleza **solely** for the purpose of discharging his duties as Philippine Police

⁷ *Cojuanco v. Sandiganbayan, et al.*, G.R. No. 134307, December 21, 1998, citing *Manotoc, Jr. vs. Court of Appeals*, 142 SCRA 149 (1986); *Silverio vs. Court of Appeals*, 195 SCRA 760 (1991); *Marcos vs. Sandiganbayan*, 247 SCRA 127 (1995).

⁸ *Manotoc v. CA, et al.*, G.R. No. L-62100, May 30, 1986

⁹ DOJ Circular No. 41, June 7, 2010, Section 4

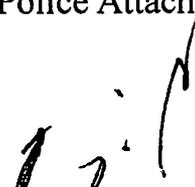
¹⁰ Hold Departure Order dated November 3, 2016, *Records*, Vol. 1, pp. 294-A to 294-B

Attaché to Islamabad, Pakistan, and **only** until November 11, 2018. Needless to say, the conditions imposed under his bail bond remain in force.

WHEREFORE, the *Hold Departure Order* dated November 3, 2016 against accused Allan C. Nobleza is **TEMPORARILY LIFTED** subject to the following conditions:

- (a) The HDO is temporarily lifted only for his official travels as Philippine Police Attaché from the Philippines to Islamabad, Pakistan until the end of his tour of duty on November 11, 2018, after which he shall return to the Philippines. Any travels other than from the Philippines to his official station in Pakistan and vice versa are subject to the approval of this Court.
- (b) Accused shall post a travel bond of ₱192,000.00 to guarantee his faithful compliance with the terms and conditions imposed herein;
- (c) In all his official travels as Philippine Police Attaché, accused Nobleza shall use his diplomatic / official passport;
- (d) Accused Nobleza is directed to notify this Court of all his travels, official or personal;
- (e) Accused Nobleza is directed to submit monthly to this Court photocopies of the pages of his official and regular passports indicating whether he travelled in his official capacity or otherwise;
- (f) Each and every time accused returns to the Philippines, he shall present himself in person to the Division Clerk of Court, within five (5) days therefrom, together with his diplomatic/official and regular passports and photocopies of the pages thereof indicating the stamp of his departure from, and entry or arrival in the Philippines, the photocopies to be authenticated by the Division Clerk of Court after a comparison with the original thereof;
- (g) Accused will abide faithfully with all his undertakings herein, such that any violation of the terms and conditions contained in this Resolution shall be sufficient ground for this Court to order the forfeiture of his travel bond, as well as to cause the issuance of a warrant for his arrest;
- (h) Notice of further proceedings hereon should he not return as undertaken, shall be made through his counsel on record;
- (i) If he fails to return as undertaken, trial will proceed as scheduled; and
- (j) An Affidavit of Undertaking shall be submitted by accused's counsel of record stating to the effect that as an officer of the Court, he is to guarantee the return of the accused to the Philippines.

The Bureau of Immigration is **DIRECTED** to lift temporarily the Hold Departure Order dated November 3, 2016 issued against accused Allan C. Nobleza for the sole purpose of assuming his post as Philippine Police Attaché

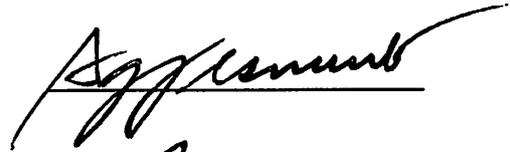


from the Philippines to Islamabad, Pakistan until the end of his tour of duty on November 11, 2018.

The Hold Departure Order **SUBSISTS** insofar as accused Nobleza's departures from the country which are unrelated to the discharge of his duties as Police Attaché in Pakistan.

SO ORDERED.

GESMUNDO, J., Chairperson

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GOMEZ-ESTOESTA, J.

Handwritten signature of Gomez-Estoesta, J. in black ink, written over a horizontal line.

TRESPESES, J.

Handwritten signature of Trespeses, J. in black ink, written over a horizontal line.