REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

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SPECIAL FIFTH DIVISION

PEOPLE OF THE PHILIPPINES, **Plaintiff,** **-vs-** **JOSE "JINGGOY" P. EJERCITO ESTRADA, ET AL.,** **Accused.**	**SB-14-CRM-0239** **For: Plunder** *Present:* *LAGOS, J., Chairperson* *MENDOZA-ARCEGA, J.,* *CRUZ, J.,** *TRESPESES, J.**, and* *PAHIMNA, J.**** *Promulgated:* September 15, 2017 lal

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RESOLUTION

MENDOZA-ARCEGA, J.:

This resolves the *Omnibus Motion* (Motions to dismiss and/or grant bail to accused, in light of the judicious and enlightening decision of the Supreme Court in the case of Gloria Macapagal-Arroyo v. Sandiganbayan; to declare and rectify the violent disregard of the accused's right to due process of law; to review/revisit the evidence adduced by the prosecution ; and to declare that the accused is still entitled to bail, as the long and continued confinement, the protracted trial, with no assurances when it would be terminated, justify to grant bail), filed by accused, Jose "Jinggoy" Ejercito Estrada (Estrada), through counsel, on September 13, 2016,

* Sitting as special member pursuant to Administrative Order No. 025-2017 dated 1 February 2017.
** Sitting as special member pursuant to Administrative Order No. 10-C-2017 dated 7 August 2017.
*** Sitting as special member pursuant to Administrative Order No. 10-C-2017 dated 7 August 2017.

wherein the accused seeks the indulgence of the Honorable Court to grant his right to bail on the following grounds: 1) the prosecution failed to prove the elements of plunder consistently with the ruling in the case of Macapagal Arroyo v. Sandiganbayan,[1] which requires the identification of a particular public officer as the main plunderer, who amassed, acquired or accumulated ill- gotten wealth by himself or in connivance/conspiracy with subordinates and other persons of at least P50,000,000.00 through combination or series of overt criminal acts. Such failure of the Information to properly allege or prove the *corpus delicti* of the crime charged justifies the dismissal of the instant case; 2) the prosecution failed to establish strong evidence of guilt against the accused; 3) accused is not a flight risk, thus he is entitled to bail; 4) neglect of the Court to resolve issues raised by the accused which is tantamount to denial of due process; 5) assuming that there is strong evidence of guilt, his long and continuous imprisonment deprived him of his freedom and liberties; and 6. his constitutional right to bail necessarily includes his right to a hearing, consistent with due process.

In response, the prosecution filed an Opposition declaring that the instant motion has no basis as the same is moored on grossly misleading and self-serving interpretations of jurisprudence. The prosecution countered saying that the instant motion is in nature a second motion for reconsideration, which is prohibited under the rules, as the same pleads for the accused's right to bail, which was already passed upon and reconsidered by the Court. Secondly, in view of the pronouncement of the Court of strong evidence of guilt against accused, bail is no longer a matter of right nor of discretion. As to the dependence of the accused in Macapagal-Arroyo v. Sandiganbayan, the prosecution belies the assertion of the accused that it expressly requires a main plunderer as the crime of plunder is a collective act undertaken by conspiring participants, so there is no main plunderer to speak of. Finally, the assertion that accused is not a flight risk should not be considered as it takes relevance only in cases of discretionary grants of bail.

On October 6, 2016, the accused, through counsel, filed his Reply and made the following assertions: 1) the prosecution's alleged procedural flaws cannot prevail over substantive rights. He avers that civil action provisions are not applicable to criminal actions, thus, the prohibition on second motions for reconsideration and *omnibus motion* does not apply in the instant case; 2) relying on the resolution of the Supreme Court in the case of Macapagal-Arroyo v. Sandiganbayan, accused is embracing the ruling for the dismissal of his case, however, in view of its pendency, at the very least, it justifies the argument that the Information is inadequate to support a conclusion of strong evidence of guilt in absence of the identification of the main plunderer, who amassed, accumulated or acquired ill-gotten wealth of at least P50,000,000.00 and ; 3) assuming that the Information is valid, the evidence presented by the prosecution is inadequate to sustain the finding of strong evidence of guilt against the accused, taking into account the incredibility of the pieces of evidence adduced by the prosecution; 4) the denial of the motion for bail was tainted with violation of due process; and 5) the purpose of bail favors a liberal approach for its grant.

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[1] Macapagal-Arroyo v. People, et al., G.R. No. 220598, July 19, 2016

To answer the averments of the accused, the prosecution insists that the observance of the rules is necessary for the orderly administration of justice. The prosecution posits that the Omnibus Motion is just an attempt by the accused for the Court to reconsider its resolution pertaining to matters that were already considered by the Court. The failure of the accused to raise all available objections at once waives all others not so included. Furthermore, the Court's finding of strong evidence of guilt disqualifies the accused from posting a bail bond for his provisional liberty. As to the reliance of the accused to the ruling in the case of Macapagal-Arroyo v. Sandiganbayan, the prosecution maintains that the same finds no application in the instant case considering that the same has not yet attained finality. In addition, the prayer of the accused for the dismissal of the instant case is misplaced as the same is procedurally infirm. To reiterate, the prosecution emphasizes that in view of the resolution of the Court finding a strong evidence of guilt against the accused, bail is no longer a matter of right nor of discretion.

DISCUSSION and RULING

On 23 June 2014, accused-movant filed his petition for bail, praying for admission to bail. The Court conducted hearings where the prosecution was given the opportunity to present its evidence. After considering the evidence presented by the prosecution, the Court, in a resolution dated 7 January 2016, found that there exists evidence of strong guilt and accordingly denied the accused-movant's petition for bail.

Accused-movant sought reconsideration, which was also denied, in a resolution dated 11 May 2016.

The prosecution correctly identifies the accused's present motion as revisiting the question of whether the accused-movant should be granted bail.

Question of bail can be revisited

In *Pobre v. Court of Appeals* [2], the Supreme Court explained that an order granting bail is interlocutory:

> An order granting bail is an interlocutory order. The word interlocutory refers to something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy. In that sense, it does not attain finality since there leaves something else to be done by the trial court with respect to the merits of the case. xxx

Following this characterization of an order granting bail, it follows that the denial of bail is also an interlocutory order. The denial of an accused's plea for admission to bail does not finally dispose of a case and it does not decide the principal issue in a criminal case, i.e., the guilt or innocence of the accused of the crimes charge. It is and should be properly considered as an interlocutory order.

[2] Pobre v. Court of Appeals, G.R. No. 141805, 8 July 2005.

It is noted that in the *Pobre* case, the Supreme Court said that a party may assail an interlocutory order by a petition for *certiorari*. This does not apply in the present case because the accused's present motion is principally based on recent developments in jurisprudence. This is not a review of the resolution denying bail *per se*, but an introduction of a Supreme Court decision which might affect the resolution denying bail.

Moreover, a second motion for reconsideration of an interlocutory order is not prohibited. Such prohibition applies to motions for reconsideration of a judgment or final order.[3] Subsequent motions for reconsideration assailing an interlocutory order, however, may be denied for being repetitive and a rehash of a previous motion for reconsideration.[4]

As resolving bail issues is an interlocutory matter, it cannot attain finality. It may change as the circumstances allow. In *Republic v. Sandiganbayan*,[6] the Supreme Court explained:

> Case law has conveniently demarcated the line between a final judgment or order and an interlocutory one on the basis of the disposition made. A judgment or order is considered final if the order disposes of the action or proceeding completely, or terminates a particular stage of the same action; in such case, the remedy available to an aggrieved party is appeal. If the order or resolution, however, merely resolves incidental matters and leaves something more to be done to resolve the merits of the case, the order is interlocutory.
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[3] San Juan v. Cruz, G.R. No. 167321, 31 July 2006.
[4] Id.
[5] See Art. 8, Civil Code of the Philippines.
[6] G.R. No. 152375, 16 December 2011.

> We clarify, too, that an interlocutory order remains under the control of the court until the case is finally resolved on the merits. The court may therefore modify or rescind the order upon sufficient grounds shown at any time before final judgment.

The arguments in the present motion are therefore not a rehash of the ones raised in the previous bail petitions. The Court may now properly appreciate the jurisprudence that supervened on the law on plunder, the crime alleged in this case, after the denial of accused Estrada's bail petition.

The Macapagal-Arroyo v. Sandiganbayan case

On 19 July 2016, the Supreme Court promulgated its decision in *Macapagal-Arroyo v. Sandiganbayan*.[7] It granted the petition for *certiorari*, filed by former President Gloria Macapagal-Arroyo and Benigno Aguas. In finding merit in the petition, the Supreme Court thereby also granted the petitioners' demurrers to evidence, the subject of their petition. Their demurrers to evidence were earlier filed in and denied by the Sandiganbayan. Since the demurrers to evidence were granted, the criminal case against the petitioners was dismissed.

In ruling to grant the petition, the Supreme Court reasoned that the Information which charged the petitioners with plunder was insufficient as it failed to identify a main plunderer. The Supreme Court thereafter examined the evidence presented in the criminal case and found that the prosecution's evidences were not sufficient to justify a conviction. This was based on the finding that no main plunderer was shown and that the overt acts of the accused did not make them criminally liable.

In granting the respective demurrers to evidence filed by former President Gloria Macapagal-Arroyo and former PCSO Budget and Accounts Manager Benigno Aguas in the aforementioned case, the Supreme Court made the following pronouncements:

> "A perusal of the information suggests that what the Prosecution sought to show was an implied conspiracy to commit plunder among all of the accused on the basis of their collective actions prior to, during and after the implied agreement. It is notable that the Prosecution did not allege that the conspiracy among all of the accused was by express agreement, or was a wheel conspiracy or a chain conspiracy.
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> The law on plunder requires that a particular public officer must be identified as the one who amassed, acquired or accumulated ill-gotten wealth because it plainly states that plunder is committed by any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates,

[7] Supra.

> subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00 through a combination or series of overt criminal acts as described in Section l(d) hereof. **Surely, the law requires in the criminal charge for plunder against several individuals that there must be a main plunderer and her co-conspirators, who may be members of her family, relatives by affinity or consanguinity, business associates, subordinates or other persons.** In other words, the allegation of the wheel conspiracy or express conspiracy in the information was appropriate because the main plunderer would then be identified in either manner. **Of course, implied conspiracy could also identify the main plunderer, but that fact must be properly alleged and duly proven by the Prosecution."**[8]

In explaining the importance of the identification of a main plunderer, the Supreme Court further elucidated:

> "Here, considering that 10 persons have been accused of amassing, accumulating and/or acquiring ill-gotten wealth aggregating P365,997,915.00, it would be improbable that the crime charged was plunder if none of them was alleged to be the main plunderer. As such, each of the 10 accused would account for the aliquot amount of only P36,599,791.50, or exactly 1/10 of the alleged aggregate ill-gotten wealth, which is far below the threshold value of ill-gotten wealth required for plunder."
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> "**Such identification of the main plunderer was not only necessary because the law required such identification, but also because it was essential in safeguarding the rights of all of the accused to be properly informed of the charges they were being made answerable for**. The main purpose of requiring the various elements of the crime charged to be set out in the information is to enable all the accused to suitably prepare their defense because they are presumed to have no independent knowledge of the facts that constituted the offense charged."[9]

On 18 April 2017, the Supreme Court promulgated its resolution denying the motion for reconsideration filed by the Ombudsman in the *Arroyo* case, thereby affirming its decision promulgated on 19 July 2016.[10]

This Court is now called to determine if the pronouncements and ruling in the *Arroyo* case have any bearing to the instant case, particularly as to whether there is sufficient justification for this Court to dismiss the case or to revisit its resolution dated 7 January 2016 denying bail to the accused Estrada.

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[8] Emphasis supplied.
[9] Emphasis supplied.
[10] See Supreme Court Website, www.supremecourt.gov.ph.com, Jurisprudence, April 2017, Macapagal-Arroyo v. People, G.R. No. 220598, April 18, 2017.

There is no basis to dismiss this case at this point

At the outset, it must be reiterated that the criminal case against the petitioners in the *Arroyo* case was dismissed because the Supreme Court reversed the denial of their respective demurrers to evidence. The Supreme Court granted the petitioners' demurrers to evidence and ordered the dismissal of the criminal case for insufficiency of evidence.

In the present case, the prosecution has not yet terminated its presentation of its evidence in chief. Thus, it would be premature to rule on any sufficiency of evidence to sustain a conviction.

There is also no defect in the Information in this case that would justify the dismissal of this case. Insofar as the allegation of a main plunderer, a reading of the Information would show that it alleges a main plunderer.

A reading of the *Arroyo* case shows that for a valid indictment for plunder, the Information must contain, in addition to the other elements clarified in the earlier *Estrada v. Sandiganbayan*[11] case, an allegation of a main plunderer who must be a public officer. The allegation of a main plunderer is now considered an integral element in charging the crime of plunder. Thus, this fact must be properly alleged in the Information.

The information against accused Estrada, et al., for Plunder reads:

"The undersigned Graft Investigation and Prosecution Officer of the Office of the Ombudsman accuses JOSE "JINGOY" P. EJERCITO ESTRADA, PAULINE THERESE MARY C. LABAYEN, JANET LIM NAPOLES, and JOHN RAYMUND DE ASIS of Plunder, defined and penalized under Sec. 2 of Republic Act No. 7080, as amended, committed, as follows:

> In 2004 to 2012, or thereabout, in the Philippines, and within this Honorable Court's Jurisdiction, above-named accused **JOSE "JINGOY" P. EJERCITO ESTRADA, then a Philippine Senator, and PAULINE THERESE MARY C. LABAYEN, then Deputy Chief of Staff of Sen. Estrada's Office, both public officers, committing the offense in relation to their respective offices**, conspiring with one another and with JANET LIM NAPOLES, and JOHN RAYMUND DE ASIS, **did then and there willfully, unlawfully and criminally amass, accumulate and/or acquire ill-gotten wealth amounting to at least ONE HUNDRED EIGHTY THREE MILLION SEVEN HUNDRED NINETY THREE THOUSAND SEVEN**

[11] G.R. No. 148560, 19 November 2001.

HUNDRED FIFTY PESOS (Php183,793,750.00) through a combination or series of overt criminal acts, as follows:

a) **by repeatedly receiving from NAPOLES and/or her representative DE ASIS, and other, kickback or commissions under the following circumstances**: before, during and/or after the project identification. NAPOLES gave, and ESTRADA and/or LABAYEN received, a percentage of the cost of a project to be funded from ESTRADA'S Priority Development Assistance Fund (PDAF), in consideration of Estrada's endorsement, directly or through LABAYEN, to the appropriate government agencies, of NAPOLES' non-government organizations which became the recipients and/or target implementers of ESTRADA's PDAF projects, which duly-funded project turned out to be ghost or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain;

b) **by taking undue advantage, on several occasions, of their official positions, authority relationships, connections and influence to unjustly enrich themselves at the expense and to damage and prejudice, of the Filipino people and the Republic of the Philippines.**

CONTRARY TO LAW."[12]

The emphasized portions of the Information above show that such Information alleges that the two public officers in this case are the main plunderers.

The Information also alleges that they conspired with other individuals to carry out a defined scheme consisting of the predicate acts for the commission of the crime of plunder. It must be noted that the Information does not mention whether the conspiracy is a wheel-type or a chain conspiracy. It also does not employ the words "main plunderer." Nevertheless, the recital in the Information apparently describes the public officers as the main plunderers and that they conspired with other individuals in doing the predicate acts for plunder.

The *Arroyo* case did not require the identification of the type of conspiracy. The reference to the identification of whether there was a wheel or chain conspiracy was only to properly identify the main plunderer. The Supreme Court noted that even an implied conspiracy may be alleged, as long as the main plunderer is identified and duly proven as such.

The discussion of the law's requirement of a main plunderer was made with reference to the threshold amount of P50 million. In particular, there is a need to

[12] Emphases supplied.

identify such main plunderer to see if he or she is alleged to have amassed, acquired, or accumulated at least P50 million.[13]

In the Information for this case, the two public officers are alleged to have amassed, accumulated and/or acquired ill-gotten wealth amounting to at least P183,793,750.00. Divided by two, the amount that each public officer is presumably alleged to be responsible for is at least P 91,896,875.00. This is clearly above the threshold amount. The two other-accused, Napoles and De Asis, were alleged to be conspirators, but the text of the Information is clear that the amassing, accumulating and/or acquiring ill-gotten wealth referred only to the two accused who are public officers.

In the accusatory portion of the Information, it is clear that the public officers are alleged to have criminally amassed, accumulated and/or acquired ill-gotten wealth amounting to at least Php183,793,750.00. Paragraphs (a) and (b) describe acts primarily done by the public officers, with the details of how they acted in concert with their alleged co-conspirators.

While the *Arroyo* case does require the identification of a main plunderer, it did not state that the actual phrase or words "main plunderer" be used in the Information. It only requires that the Information, in its recital of alleged facts, must allege who the main plunderer is.

Admission to bail

Although the Information in this case complies with the requirement of alleging a main plunderer, the evidence presented by the prosecution in the bail hearings do not strongly show that the ones identified as main plunderers are really the main actors or the masterminds of the scheme detailed in the Information. Consequently, there appears to be no strong evidence to identify the main plunderer. Being a necessary requisite in the crime of plunder, there must also be clear and strong evidence to establish who the main plunderer is. In the absence of strong evidence to show the main plunderer, there can be no strong evidence of guilt of the accused. It is to be noted that there is no express allegation in the Information as to what kind of conspiracy existed among the accused, whether express or implied; or if a wheel conspiracy or a chain conspiracy existed. The Information is similar to that in the *Arroyo* case, in the sense that the prosecution seeks to show an implied conspiracy to commit plunder among all of the accused. In the *Arroyo* case, it was held that while an implied conspiracy could also identify the main plunderer, such fact must be properly alleged and duly proven by the prosecution.

While this Court's Resolution of January 7, 2016 found the prosecution evidence against accused Estrada to be strong, thereby denying his application for bail, a review of the evidence thus far presented by the prosecution does not clearly identify the main plunderer. In the mind of the Court, there is now an ambiguity or

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[13] In the *Arroyo* case, there were 10 accused, all of whom were public officers. They were all alleged to have amassed, accumulated and/or acquired ill-gotten wealth in the amount of P365,997,915.00. The Supreme Court said that without the identification of a main plunderer, only P36,599,791.50 would pertain to each accused.

even doubt as to who the main plunderer is, given that there are two (2) public officers charged, namely Estrada and Labayen, and the observation that the PDAF scheme apparently was commenced by or originated with Napoles.

In the absence of a definitive allegation in the Information, or clear and unambiguous evidence presented by the prosecution, this Court cannot just assume or impute the characteristic of being the main plunderer upon either or both the accused Estrada or Labayen. In a criminal prosecution, any ambiguity or doubt must be strictly construed against the State, represented in this case by the Prosecution, and in favor of the accused.[14]

As earlier explained in the *Estrada* case and clarified further in the *Arroyo* case, the main plunderer is the main beneficiary of the amassing, accumulation and/or acquisition of ill-gotten wealth. The participation of the conspirators should be in relation to attaining the goal of enriching the public officer. It appears then that it is not sufficient to show that the public officer was unjustly enriched in the amount of at least P50 million, but it must also be shown that the scheme was perpetrated primarily to benefit such public officer. This is akin to identifying such public officer as the brains or mastermind behind such scheme.

In the *Arroyo* case, different types of conspiracies were also discussed:

> "An illustration of wheel conspiracy wherein there is only one conspiracy involved was the conspiracy alleged in the information for plunder filed against former President Estrada and his co-conspirators. Former President Estrada was the hub while the spokes were all the other accused individuals. The rim that enclosed the spokes was the common goal in the overall conspiracy, i.e., the amassing, accumulation and acquisition of ill-gotten wealth.
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> On the other hand, the American case of *Kotteakos v. United States* illustrates a wheel conspiracy where multiple conspiracies were established instead of one single conspiracy. There, Simon Brown, the hub, assisted 31 independent individuals to obtain separate fraudulent loans from the US Government. Although all the defendants were engaged in the same type of illegal activity, there was no common purpose or overall plan among them, and they were not liable for involvement in a single conspiracy. Each loan was an end in itself, separate from all others, although all were alike in having similar illegal objects. Except for Brown, the common figure, no conspirator was interested in whether any loan except his own went through. Thus, the US Supreme Court concluded that there existed 32 separate conspiracies involving Brown rather than one common conspiracy."

The evidence adduced in the bail hearings sufficiently show that there was a scheme by which the PDAF allocations of accused Estrada were systematically and

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[14] See Alferez v. People, G.R. No. 182301, 31 January 2011; Enrile v. Sandiganbayan, G.R. No. 213847, 18 August 2015, citing Government of the United States of America v. Purganan, G.R. No. 148571, 24 September 2002.

illegally siphoned. As to his PDAF allocation, this scheme was facilitated by accused Estrada's initial endorsement and subsequent follow-up.

But it was also established from the evidence in the bail hearings that the scheme as to accused Estrada's PDAF was not unique to him. It was the brainchild of accused Napoles. The scheme was used to siphon off the PDAF allocations of a number of other lawmakers.[15]

In the resolution denying bail, dated 7 January 2016, the Court found:

"**The catalyst in the entire scheme was traced to Janet Lim Napoles**, who seemed to have developed a network on her own, employing relatives and trusted workers to do her bidding. Like puppets on a string, **SDPFFI and MAMFI, like other NGOs she has control of, were apparently created to serve as conduits for the sole purpose of diverting PDAF allocations to where Napoles instructed them to be made.** xxx"[16]

The Court further found:

"Such factual circumstances would inevitably tie all loose ends in Luy's stark revelation that the incorporation of SDPFFI and MAMFI, among other NGOs controlled by Napoles, had been part of a conduit scheme to divert the use of the PDAF allocations. **Napoles was the epicenter of this vast network which vibrated at her command.** As testified to, the direct releases of the PDAF allocations to the implementing agencies were transferred straight to the bank accounts of NGOs controlled by Napoles. The PDAF deposits were subsequently withdrawn in cash by any of the trusted employees of Napoles (either Merlina P. Suñas, Marina C. Sula, Benhur K. Luy, Evelyn De Leon, and John Raymund De Asis) using pre-signed withdrawal slips **which were then all re-routed at the behest of Napoles, either to pay another kickback to another government official, or to be deposited in the accounts of her own corporations or otherwise converted to dollars. At other times, the cash was simply taken to the house of Napoles in Taguig City.** The flamboyant influx of cash for Napoles was virtually the prevalent intimation of her employees turned whistleblowers so much so that at the mere promise of a small commission, where they could all be given the chance to partake of the bounty, they were willing to overstep all rules on law and ethics to follow her bidding in the incorporation of such NGOs"[17]

After going through the evidence presented in the bail hearings, it is not clear what conspiracy is present as shown by such evidence. It could be that as to accused

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[15] The prosecution witnesses (specifically Benhur K. Luy, Merlina P. Suñas, and Marina C. Sula) described the entire scheme. They testified as to how Napoles and her employees incorporated about 21 NGOs, which eventually served as conduits for siphoning the funds from PDAF allocations of various lawmakers. See Resolution dated 6 January 2016, pp. 12-39, 42-50. 52-56.
[16] Resolution dated 6 January 2016, pp. 138-139; Records, Vol. 19, pp. 720-721. Emphases supplied.
[17] Id., at pp. 144-145; Records, Vol. 19, pp. 726-727. Emphases supplied.

Estrada's PDAF allocation, he could be the central figure, considering that none of the transactions could ever be initiated and facilitated without his initial decision to proceed. But it cannot also be denied that the elaborate scheme is not his own doing and is in fact the handiwork of accused Napoles.

The Court earlier said that there appears to be a wheel conspiracy where accused Estrada is the hub:

> "xxx The conspiracy in the first *Estrada* case was said to resemble the "wheel" conspiracy; it is in the same way that his case has burgeoned into a "wheel" conspiracy. The diversion of the PDAF allocations was controlled by a single hub, namely: Senator Estrada as the lawmaker who gave the impetus to release his PDAF allocations to favor Napoles, who controlled the "spokes" of the conspiracy through her networking scheme. xxx"[18]

But when the Court then examined the evidence and arrived at such finding, the identification of a main plunderer was not yet a factor to be considered. Now, after considering the *Arroyo* case, such finding needs to be reassessed.

"Main", an adjective, means "principal, leading, or chief in importance, strength, extent, or length."[19] When used together with the word "plunderer" as in "main plunderer", it means a principal plunderer or the most important personality in a plunder scheme. A main plunderer should therefore be not only the principal person who had amassed ill-gotten wealth but should also be the one who principally benefitted and/or the main actor who masterminded the whole plunder scheme and initiated it. The Supreme Court emphasized in the *Arroyo* case that there must be relevant proof as to who the mastermind is, for the identification of the main plunderer.[20]

The systematic conspiracies in the whole PDAF scam could be similar to *Kotteakos v. United States*,[21] which was cited in the *Arroyo* case. Viewed in this manner, it may be seen that accused Estrada could just be one of the pawns of accused Napoles, who was the central figure in an even more elaborate conspiracy, consisting of various lawmakers.

This is not to say that the PDAF allocations of other lawmakers must be included in this case or that all such PDAF allocations be subject of one case. In the *Kotteakos* case, the United States Supreme Court invalidated the conviction of various individuals for bank fraud. It held that it was improper to charge all of them based on one conspiracy when it appeared that there was just one central figure who linked all of the accused. There were several frauds and each fraudulent transaction involved different persons, except one, who facilitated the commission of each fraudulent transaction. In that case, it appeared that there was one mastermind and

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[18] Id., at p. 152; Records, Vol. 19, p. 734.
[19] Ballentine's Law Dictionary (3rd Ed., 1969); Black's Law Dictionary (6th Ed., 1990).
[20] See Resolution dated 18 April 2017, Arroyo v. Sandiganbayan, G.R. No. 220598, p. 12.
[21] 328 U.S. 750 (1946).

the individual frauds were part of a bigger plan. Eventually, it was ruled that the accused should be charged separately for each fraud, which may constitute a separable conspiracy.

The application of the *Kotteakos* case in the present case is with respect to the determination of the main plunderer. When an accused is alleged to be a main plunderer, it does not seem logical that his or her participation can only be as a simple pawn or part of a bigger plan which he does not control. It may be validly questioned if there can there still be a main plunderer when someone else appears to be the mastermind of the entire scheme. As applied to this present case, it may be asked: what is the nature of accused Estrada's participation in the alleged misuse of his PDAF allocation? It may be that insofar as his PDAF allocation is concerned, he was the main plunderer and the one in charge, as alleged in the Information. But it could also be that he is simply one of the spokes in a bigger plan where accused Napoles is the hub, where each of the lawmaker having a PDAF allocation is a spoke.

By charging accused Estrada for the misuse of his PDAF allocation and alleging him to be the main plunderer, it is clear that the prosecution is alleging that accused Estrada was the one in charge as regards his PDAF allocation. But the evidence presented thus far does not definitively support the theory that Estrada was the "mastermind" behind these transactions.

After assessing the evidence presented during the bail hearings, the Court earlier found that there was strong evidence to show that accused Estrada participated in the siphoning of his funds. This cannot be denied. But what is likewise shown is that the scheme was perpetrated, as to various lawmakers, by accused Napoles. The evidence on record does not definitively show which person was intended to be enriched or benefited. There is also evidence detailing the participation of accused Napoles, whose control over the scheme appears to be very extensive.

Paragraph (a) of the accusatory portion of the Information reads:

> "a) by repeatedly receiving from NAPOLES and/or her representative DE ASIS, and other, kickback or commissions under the following circumstances: before, during and/or after the project identification. xxx **thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain;**".[22]

When read as part of the Information, it does not depart from the allegation that accused Estrada is the main plunderer. But when the evidence is considered, it adds to the confusion as to who is the main beneficiary of the entire scheme. This allegation only shows that the prosecution acknowledges that there was really benefit to accused Napoles. But when it is considered that the evidence on record shows that she had substantial control of the operations after accused Estrada's endorsement, the inference that accused Estrada is the main plunderer or the mastermind becomes shaky. As discussed above, the Court earlier found Napoles as

[22] Emphasis supplied.

the "catalyst" in the entire scheme, and she was the one who established its network, being its "epicenter".

Thus, if the scheme perpetrated by the "main plunderer" enabled accused Napoles to misappropriate the PDAF proceeds for Napoles' gain, the over-all objective of amassing, accumulating and acquiring ill-gotten wealth could possibly not have been towards enriching a public officer, accused Estrada or Labayen.

What the Court is saying now is that the evidence on record shows either of the two situations as possible. The presence of these two competing possibilities creates doubts as to the participation of accused Estrada as a main plunderer. For if he cannot be shown to be the central figure insofar as his PDAF allocation is concerned, it cannot be reasonably said that he is the main plunderer since that would mean that the scheme was not entirely designed to enrich him.

Although there is evidence to show that there were glaring irregularities in the disbursement of accused Estrada's PDAF allocations and that he received a sum of money from his participation in these irregularities, there is no strong evidence to show that he is a main plunderer within the contemplation of the plunder law and as alleged in the Information. Thus, his admission to bail is in order.

After a careful evaluation of the matter, including due consideration of the ruling in the *Arroyo* case and a review of the evidence thus far presented at this stage of the proceedings, the Court finds that the evidence has not strongly established accused Estrada as the main plunderer. The Court thus rules that the evidence against accused Estrada is not strong, which therefore entitles him to bail.

This ruling does not delve on the guilt or innocence of accused Estrada. It will also not preclude the prosecution from its right to present further evidence during the trial of this case, and the prosecution's opportunity to prove the guilt of all the accused for the crime charged.

In arriving at this ruling, it has to be stated that this Court is cognizant of the pronouncements in *Enrile vs. Sandiganbayan*,[23] where it was ratiocinated:

> "It is worthy to note that bail is not granted to prevent the accused from committing additional crimes. The purpose of bail is to guarantee the appearance of the accused at the trial, or whenever so required by the trial court. The amount of bail should be high enough to assure the presence of the accused when so required, but it should be no higher than is reasonably calculated to fulfill this purpose. Thus, bail acts as a reconciling mechanism to accommodate both the accused's interest in his provisional liberty before or during the trial, and the society's interest in assuring the accused's presence at trial."

It has thus been ruled that the main purpose of bail is to ensure the appearance of the accused during the trial. In the present case, considering that the accused was

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[23] G.R. No. 213847, 18 August 2015.

a public officer, a former Senator of the Philippines and a prominent personality, with close family ties in the country, the probability of flight is not that much. The fact that he surrendered himself voluntarily to the authorities and remained in detention for almost three (3) years now also negate the intention or inclination to evade the legal processes.

WHEREFORE, in view of the foregoing, the Court hereby RESOLVES to:

(1) DENY accused Estrada's Motion to Dismiss the case for lack of merit; and

(2) RECONSIDER and SET ASIDE the Resolution dated January 7, 2016 as to accused Estrada, and hereby GRANTS bail to accused Estrada, upon the submission and approval of bail in the amount of One Million Pesos (₱1,000,000.00), to be posted in cash.

SO ORDERED.

MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

I dissent (see attached dissenting opinion)
RAFAEL R. LAGOS
Chairperson

REYNALDO P. CRUZ
Associate Justice

I dissent.
[Please see separate dissenting opinion]
ZALDY V. TRESPESES
Associate Justice

LORIFEL L. PAHIMNA
Associate Justice