Republic of the Philippines
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**Crim. Case Nos. SB-17-CRM-0636-637 For: Violation of Sec. 3(e), R.A. 3019) Crim. Case Nos. SB-17-CRM-0638-39 (For: Malversation under Article 217, Revised Penal Code) Crim. Case No. SB-17-CRM-0640 (For: Direct Bribery under Article 210, Revised Penal Code)**
-versus-	*Present*: **Herrera, Jr., J., Chairperson Musngi, J. & Pahimna, J.**
DOUGLAS RALOTA CAGAS, ET AL., Accused.	*Promulgated:* September 18, 2017

x----------x

RESOLUTION

PAHIMNA, J:

Before the Court are the following incidents:

1. ***Urgent Motion for Judicial Determination of Probable Cause with Entry of Appearance*** filed by accused Douglas Ralota Cagas through counsel dated March 31, 2017;
2. ***Joint Omnibus Motion [1. Motion for Outright Dismissal for Clear Lack of Probable Cause; 2. Motion to Hold in Abeyance the Issuance of Warrants of Arrest; and 3. Motion for a Bill of Particulars]*** filed by accused Mario L. Relampagos, Rosario Nuñez, Lalaine Paule and Marilou Bare through counsel dated April 3, 2017;
3. ***Consolidated Motion for Judicial Determination of Probable Cause with Urgent Motion to Suspend Proceedings*** filed by accused Janet Lim Napoles through counsel dated April 10, 2017, with the *Opposition* filed by the plaintiff through the

Office of the Special Prosecutor, Office of the Ombudsman, dated April 25, 2017; and

4. ***Formal Entry of Appearance with Ex-Parte Urgent Motion for Reduction of Bail*** filed by accused Francisco B. Figura, Marivic V. Jover and Maurine E. Dimaranan through counsel dated April 3, 2017.

In the first motion, accused Cagas argues that his alleged participation in the supposed "complex scheme" or "modus operandi" in committing the crimes charged was not proven, the finding of probable cause against him resting entirely upon mere surmises and conjectures and upon self-serving, sweeping and uncorroborated statements of Bunhur Luy, Merlina Suñas, Gertrudes Luy, Nova Kay Macalinta, Elena Abundo, and Avelina Lingo.

Likewise, Cagas points to the implementing agency (IA), specifically, the Technology and Livelihood Resource Center (TLRC) as the one who selected Countrywide Agri and Rural Economic and Development Foundation, Inc., (CARED) and Philippine Social Development Foundation, Inc. (PSDFI) and his only participation in the process is that he recommended these non-government organizations (NGOs), which recommendation, he adds, the TLRC is free to reject, it being mandated to examine the legal status of the NGOs. Moreover, he merely relied on the presumption that TLRC officials acted within the bounds of law. Likewise, he avers that the Priority Development Assistance Fund (PDAF) funds never passed through his hands as the same were released directly from the Department of Budget and Management (DBM) to the TLRC. Also, it was the TLRC who had the responsibility of complying with the legal requirement of "bidding" and of monitoring the NGOs.

Likewise, he asserts that his participation in any conspiracy was never proven. He denied ever receiving, or authorizing co-accused Atty. Zenaida Garcia Cruz Ducut to receive on his behalf, any rebates, commissions and/or kickbacks from co-accused Janet Lim Napoles. He claims that the witnesses against him have lost their credibility for openly confessing to forging documents and falsifying liquidation reports/data.

Meanwhile, in the second motion, accused Relampagos, Nuñez, Paule and Bare assert that the element of unwarranted benefit, advantage or preference is absent because the Special Allotment Release Order (SARO) and the Notice of Cash Allocation (NCA) were never expedited. Moreover, the SAROs and NCAs undergo several stages and pass through different levels of the DBM. As such, prosecution witness Benhur Luy is mistaken in saying that it is the office of accused (then Undersecretary) Relampagos that prepared the SAROs and could expedite the same. The latter only signs the documents on

behalf of the DBM Secretary when the latter is absent. Further, SARO No. ROCS-07-00046 is allegedly not even signed by Relampagos. Furthermore, they contend that there is nothing irregular in the follow-ups made with their office.

Anent the charge of Malversation, they posit that since the DBM has no control of the funds/property subject of Article 217, Revised Penal Code, the DBM cannot commit the same simply by issuing SAROs and NCAs. Likewise, witness Luy allegedly admitted that no kickbacks ever went to the DBM. They also argue that conspiracy cannot be based on mere speculation as it must be proven by direct evidence or proof of overt acts indicating a common design.

In addition, they moved for a bill of particulars. For them, the Informations (for SB-17-CRM-0636 and 0637), in charging them of having "facilitated the processing of the aforementioned SARO and the corresponding Notice of Cash Allocation...", lack sufficient definiteness disabling them from properly preparing their defense.

On the other hand, accused Napoles, in the third motion, argues that the Informations were based on a resolution and an order that are insufficient both in form and in substance. The resolution and order likewise allegedly failed to allege and substantiate the elements of Section 3 (e) of R.A. 3019 and also of Article 217 of the Revised Penal Code. She also asserts insufficiency of the allegations in the Informations to "establish beyond reasonable doubt a pattern of overt criminal acts indicative of the overall unlawful scheme of conspiracy."

Expounding, she claimed vagueness of the Informations because they only estimated the date when she allegedly committed the offense. She also believed that the Informations allege sweeping allegation of conspiracy without mention of any specific acts she supposedly did in the alleged conspiracy. Lastly, she is not a public officer exercising administrative or judicial function that can cause undue injury to any government dealings; neither is she an accountable public officer having custody of public funds.

On the contrary, the People, through the Office of the Special Prosecutor (OSP), Office of the Ombudsman, in its Opposition, countered that Napoles' motion is superfluous because with or without the same, the court is duty-bound to personally evaluate the resolution of the prosecution and the supporting evidence on record to determine the existence or non-existence of probable cause for the arrest of the accused. It also pointed out that this Court had already issued warrants of arrest against all accused. Verily, the present motion became moot and academic.

The OSP added that it suffices that the Informations alleged the essential elements of the crime charged; detailing the specific acts constituting the offense is not required. It also stressed the indispensability of the role played by each accused which led to the success of their scheme that, without any of them, the same would have failed. Besides, the OSP further vented, the determination of existence of probable cause lies within the discretion of the Office of the Ombudsman.

THE COURT'S RULING

First, on the existence of probable cause.

The distinction between executive and judicial determination of probable cause is jurisprudentially-entrenched. In the case of *Leviste v. Alameda*,[1] the Supreme Court once again illumined on the matter, viz:

> 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 that function has been correctly discharged by the public prosecutor, i.e., whether 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.
>
> The judicial determination of probable cause 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. Paragraph (a), Section 5, Rule 112 of the Rules of Court outlines the procedure to be followed by the RTC.
>
> 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.

---

[1] G.R. No. 182677, August 3, 2010.

> What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. But the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall (1) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause, and on the basis thereof, he may already make a personal determination of the existence of probable cause; and (2) if he is not satisfied that probable cause exists, he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause. (emphasis and underscoring supplied)
>
> **xxx** **xxx** **xxx**
>
> The periods provided in the Revised Rules of Criminal Procedure are **mandatory,** and as such, the judge must determine the presence or absence of probable cause within such periods. The Sandiganbayan's determination of probable cause is made ex parte and is summary in nature, not adversarial. The Judge should not be stymied and distracted from his determination of probable cause by **needless motions** for determination of probable cause filed by the accused.

Thus, following established doctrine and procedure, this Court, did determine the existence of probable cause based on the resolution of the prosecution and the supporting evidence on record. Having found probable cause against all accused, the Court correspondingly issued warrants of arrests against them. Verily, the instant motions for determination of probable are **superfluous and unnecessary** "if not a deliberate attempt to cut short the process by asking the judge to weigh in on the evidence without a full-blown trial.[2]

The Court's Order of April 7, 2017, treated the present motions as motions to reconsider its finding of probable cause. However, the Court stands by its earlier assessment that all the accused are probably guilty of the offenses respectively charged against them. The records reveal the participation of each accused in the elaborate scheme of funnelling Cagas' PDAF allocations to inexistent or ghost projects which enabled them to misappropriate Cagas' PDAF.

At this juncture, it is not amiss to emphasize that-

> The determination of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and there is enough reason to believe that it was committed by the accused. **It need not be based on clear and convincing evidence of guilt, neither on evidence**

---

[2] Delos Santos-Dio v. Court of Appeals, G.R. No. 178947, June 26, 2013.

> **establishing absolute certainty of guilt**. What is merely required is "probability of guilt." Its determination, too, **does not call for the application of rules or standards of proof that a judgment of conviction requires after trial on the merits**. Thus, in concluding that there is probable cause, it suffices that it is believed that the act or omission complained of constitutes the very offense charged.
>
> It is also important to stress that the determination of probable cause **does not depend on the validity or merits of a party's accusation or defense or on the admissibility or veracity of testimonies presented.**
> xxx[3]

Thus, the factual and legal issues raised by all accused should be passed upon after a full-blown trial. "Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge."[4] Specifically, the testimonies of the whistle blowers will surely pass judicial dissection during the trial on the merits.

Second, on the sufficiency of the Informations.

A reading of the Informations disclose that Napoles, allegedly in conspiracy with the other accused, committed the offense for SB-17-CRM-0636 and SB-17-CRM-0638 in "January 2007, or sometime prior or subsequent thereto," and for SB-17-CRM-0637 and SB-17-CRM-0639, in "February 2007, or sometime prior or subsequent thereto." These allegations meet the sufficiency required by law. At any rate, "[t]he Rules do not require the Information to exactly allege the date and place of the commission of the offense, unless the date and the place are material ingredients or essential elements of the offense, or are necessary for its identification."[5] But date is immaterial in Section 3(e), R.A. 3019 and Malversation. Hence, the exact date when they were supposedly committed need not be alleged in the present Informations.

Further, the conspiracy here, for not being charged as a crime but merely a mode of committing one, "[t]here is less necessity of reciting its particularities in the Information because conspiracy is not the gravamen of the offense charged." *Estrada v. Sandiganbayan*[6] held:

> ... it is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word "conspire," or its derivatives or synonyms, such as confederate, connive, collude, etc; or

---

[3] Unilever v. Tan, G.R. No. 179367, January 29, 2014.
[4] Metropolitan Bank & Trust Company v. Gonzales, G.R. No. 180165, April 7, 2009, 584 SCRA 631, 640-641, cited in Unilever v. Tan, G.R. No. 179367, January 29, 2014.
[5] Enrile v. People of the Philippines, G.R. No. 213455, August 11, 2015. (Emphasis supplied).
[6] G.R. No. 148965, February 26, 2002.

> (2) by allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.

Ergo, it suffices that the present Informations allege conspiracy in this manner: "conspiring with one another and with . . . and private individuals **JANET LIM NAPOLES**..."

Meanwhile, be it recalled that accused Relampagos, Nuñez, Paule and Bare, for their part, also moved for a bill of particulars. For them, the charge that they "facilitated the processing of the aforementioned SARO and the corresponding Notice of Cash Allocation..." lacks particularity. However, there is nothing vague in the phrase. Notably, independent of the merits of their counter-arguments, they were even able to address the charges against them point-by-point. Among others, they claimed that the allegation of facilitating the processing of the SAROs and NCAs is not supported by evidence; they deny expediting the same and even explained the process flow. In addition, it is well to emphasize that evidentiary facts need not be alleged in the information.

Third, on the contention that Napoles is not a public officer who cannot be made liable under the present Informations.

On account of the allegation of conspiracy, Napoles' argument is clearly misplaced.

As cited by Napoles herself, *Dela Chica v. Sandiganbayan*[7] identified the offenders in Section 3(e) of R.A. 3019, to be "... public officers or **private persons charged in conspiracy with them**." Moreover, in *Napoles v. Ombudsman Morales*, [8] the Supreme Court similarly held -

> That a private individual, such as Napoles, could not be charged for Plunder and violations of Section 3 (e) of RA 3019 because the offenders in those crimes are public officers is a complete misconception. It has been long-settled that while the primary offender in the aforesaid crimes are public officers, **private individuals may also be held liable for the same if they are found to have conspired with said officers in committing the same. This proceeds from the fundamental principle that in cases of conspiracy, the act of one is the act of all**. In this case, since it appears that Napoles has acted in concert with public officers in the systematic pillaging of Sen. Revilla's PDAF, the Ombudsman correctly indicted her as a co-conspirator for the aforementioned crimes.

---

[7] G.R. No. 144823. December 8, 2003.

[8] G.R. Nos. 213536-37, December 6, 2016, (consolidated with Cambe v. Ombudsman Morales, G.R. Nos. 212014-15, et al.)

Lastly, on the Motion for Reduction of Bail.

Citing financial constraints, accused Figura, Jover and Dimaranan, each charged with 2 counts of violation of 3(e) of R.A. 3019 and 2 counts of violation of Article 217 of the Revised Penal Code, move for the reduction of the recommended bail to Three Thousand Pesos (PhP3,000.00) for each count.

Considering all the attendant circumstances, as enumerated in Section 9, Rule 114, Rules of Court,[9] the Court finds it reasonable to reduce the recommended bail by 50%.

WHEREFORE, for lack of merit, the following are hereby **DENIED**, to wit:

1. Cagas' ***Urgent Motion for Judicial Determination of Probable Cause with Entry of Appearance*** dated March 31, 2017;
2. Relampagos, Nuñez, and Paul's ***Joint Omnibus Motion [1. Motion for Outright Dismissal for Clear Lack of Probable Cause; 2. Motion to Hold in Abeyance the Issuance of Warrants of Arrest; and 3. Motion for a Bill of Particulars]*** dated April 3, 2017; and
3. Napoles' ***Consolidated Motion for Judicial Determination of Probable Cause with Urgent Motion to Suspend Proceedings*** dated April 10, 2017

On the other hand, Figura, Jover and Dimaranan's ***Ex-Parte Urgent Motion for Reduction of Bail*** is hereby **PARTIALLY GRANTED**. Each is allowed to post bail at the reduced amount of PhP15,000.00 for SB17-CRM-

---

[9] Section 9. *Amount of bail; guidelines.* — The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following factors:
(a) Financial ability of the accused to give bail;
(b) Nature and circumstances of the offense;
(c) Penalty for the offense charged;
(d) Character and reputation of the accused;
(e) Age and health of the accused;
(f) Weight of the evidence against the accused;
(g) Probability of the accused appearing at the trial;
(h) Forfeiture of other bail;
(i) The fact that accused was a fugitive from justice when arrested; and
(j) Pendency of other cases where the accused is on bail.
Excessive bail shall not be required. (9a)

0636, PhP15,000.00 for SB17-CRM-0637; PhP20,000.00 for SB17-CRM-0638 and PhP20,000.00 for SB17-CRM-0639, all to be posted in cash.

SO ORDERED.

LORIFEL L. PAHIMNA
Associate Justice

WE CONCUR:

OSCAR C. HERRERA, JR.
Chairperson

MICHAEL FREDERICK L. MUSNGI
Associate Justice