Republic of the Philippines
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff,	**Crim. Case Nos. SB-16-CRM-0254 to 0257** **(For Violation of Sec. 3(e), R.A. 3019)** **Crim. Case Nos. SB-16-CRM-0258 to 261** **(For: Malversation under Article 217, Revised Penal Code)** **Crim. Case Nos. SB-16-CRM-0262 to 0263** **(For: Direct Bribery under Article 210, Revised Penal Code)**
-versus-	*Present*: **Herrera, Jr., J., Chairperson** **Musngi, J. &** **Pahimna, J.**
ARTHUR YUSAY PINGOY, JR., ET AL., Accused.	*Promulgated:* October 20, 2017

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

RESOLUTION

PAHIMNA, J:

This pertains to the following motions:

1. ***Consolidated Motion for Judicial Determination of Probable Cause with Urgent Motion to Suspend Proceedings*** filed by accused Janet Lim Napoles through counsel dated May 11, 2016, together with the ***Comment/Opposition*** thereto filed by the plaintiff through the Office of the Special Prosecutor (OSP), Office of the Ombudsman, dated June 01, 2016, as well as accused Napoles' ***Reply*** dated June 22, 2016; and

2. ***Joint Omnibus Motion [1. Motion for Judicial Determination of Probable Cause; 2. Motion for a Bill of Particulars; and 3. Motion for Reduction of Bail]*** filed by accused Mario L. Relampagos, Rosario Nuñez, Lalaine Paule and Marilou Bare through counsel dated June 17, 2016, together with the OSP's ***Comment/Opposition*** thereto dated July 7 , 2016, as well as the accused's ***Joint Reply*** dated July 15, 2016.

In the first motion, accused Napoles argues, *inter alia*, 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 (RPC). 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 posits that a cursory examination of the Informations discloses that they failed to specify the approximate time of the commission of the offense, the particular place where the offense was committed, and the specific acts or omissions constituting the offense. Such deficiency allegedly defeats her right to be informed of the accusation against her and to prepare her defense. She also believes 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.

For its part, the OSP 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. The determination of probable cause during the preliminary investigation is a function that belongs to the Office of the Ombudsman, and it is only when the finding is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction when the courts may interfere.

Moreover, the OSP vented that the date and place of the commission of the offense as alleged in the instant Informations are sufficient enough to apprise Napoles of the crime charged. The Informations likewise sufficiently state the specific acts and participation of Napoles enabling her to know what offense is charged.

Napoles replied, reiterating insufficiency of evidence to move a reasonable cautious man to believe that she violated Section 3 (e) of R.A. 3019 and Article 217 of the RPC.

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 Department of Budget and Management (DBM). Specifically, the evaluation, recommendation, and preparation of the SAROs/NCAs and other release documents are done by the Technical Staff of the different Bureaus and not by the Staff of the Office of the Undersecretary. As such, prosecution witness Benhur Luy is mistaken in saying that it is the office of accused (then Undersecretary) Relampagos that prepares the SAROs and could expedite the same. The latter allegedly only signs the documents on behalf of the DBM Secretary when the latter is absent. In fact, SARO Nos. ROCS-07-09395 and ROCS-07-02974 were allegedly not even signed by Relampagos.

As regards the charge of Malversation, they posit that since the DBM has no control of the funds/property subject of Article 217, RPC, 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 claim that the allegation of conspiracy has no basis.

Moreover, Relampagos, et al., move for a bill of particulars. For them, the Informations in charging them of having "hastily facilitated the processing of the aforementioned SARO and the corresponding Notice of Cash Allocation...", lack sufficient definiteness disabling them from properly preparing their defense.

Finally, the four accused, reasoning financial constraints, additionally prays for the reduction of bail from PhP280,000.00 to PhP140,000.00 (PhP15,000.00 per charge of Section 3(e), R.A 3019 and PhP20,000.00 for each count of Malversation).

The OSP, in turn, stressed that Ben Hur Luy identified accused Relampagos, Bare, Nunez, and Paule as Napoles' contacts within the DBM who helped expedite the processing and release of the SAROs and NCAs. The OSP likewise maintained that they gave Napoles unwarranted benefits by repeatedly failing to observe the requirements of R.A. 9184(Government Procurement Reform Act), its implementing rules and regulations, Government Procurement Policy Board (GPPB) regulations, as well as national budget circulars. It added that the non-government organizations (NGO) selected by accused Pingoy did not possess the required accreditation to transact with the Government and did not possess a track record in project implementation; in spite of the foregoing irregularities, they, with indecent haste, processed the SAROs and NCAs to facilitate the release of the funds to Napoles-controlled NGOs. Such accommodation enabled Napoles to repeatedly receive unwarranted benefits. The OSP further countered that the allegations in the Informations surpass the requirements of Section 9, Rule 110 of the

Rules of Court, as the same sufficiently describe the contributory acts of accused-movants.

Finally, the OSP opposed the motion for reduction of bail considering the gravity of the offenses, the amount involved (PhP20,910,000.00), and the financial capacity of the four accused.

In reply, accused Relampagos, et al. insisted the necessity of the judicial determination of probable cause to allegedly protect their constitutional rights and to avoid their oppression. They also maintained lack of evidentiary support as well as absence of unwarranted benefit, advantage or preference. Further, there is allegedly no standard time frame for the processing of a SARO. Also, for them, "signing the SARO and NCA is not the concrete and overt acts before, during and after the commission of the crime charged indicative of a common design."

Finally, they invoked in their favor the presumption of regularity in the performance of official duties. They further plead for this Court to take judicial notice of the Resolution of the Court's First Division in SB-14-CRM-0267 to 0282, which found no probable cause against accused with respect to SAROs not signed by accused Relampagos, and entertained serious doubts on the existence of probable cause as to those SAROs bearing his signature.

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.

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

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.

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**

Thus, following established doctrine and procedure, this Court, after carefully evaluating the Informations and Resolution dated February 10, 2016, as well as all supporting documents attached, finds that probable cause exists to hold all accused for trial for the offenses charged and to issue warrants of arrest against them. The records detail the respective roles of each accused in the elaborate scheme of funnelling accused Pingoy's PDAF allocations to inexistent or ghost projects through Napoles-controlled NGOs, enabling them to misappropriate Pingoy's PDAF.

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] It is not amiss to underscore 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**

---

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

be based on clear and convincing evidence of guilt, neither on evidence 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]

Consequently, the issues raised by all accused-movants 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]

So too, is the plea to take judicial notice of the Resolution of the Court's First Division deserves scant consideration. Equally applicable to this Court is that held in *Francisco v. Rojas*, which states that "... a ruling of a particular division of the CA, while may be taken cognizance of in some cases, cannot bind or prejudice a ruling of another division thereof, the former being a co-ordinate authority."[5]

Second, on the sufficiency of the Informations.

A reading of the Informations reveals that Napoles, allegedly in conspiracy with the other accused, committed the offense for SB-16-CRM-0254 to 0255, 0258 to 0259, "In April 2007, or sometime prior or subsequent thereto"; for SB-16-CRM- 0256, "In the period January to June 2008, or sometime prior or subsequent thereto"; for SB-16-CRM-0257and 0261, "In the period May 200s9 to June 2009, or sometime prior or subsequent thereto"; and for SB-16-CRM- 0260, "In or about January 2008 to June 2008 , or sometime prior or subsequent thereto."

These allegations meet the sufficiency requirement. 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."[6] 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.

---

[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] G.R. No. 167120, April 23, 2014.
[6] Enrile v. People of the Philippines, G.R. No. 213455, August 11, 2015. (Emphasis supplied).

Further, the Informations plainly specify Quezon City as the alleged place of commission of the offense. Furthermore, the Informations sufficiently allege the requisite factual averments of Section 3 (e) of R.A. 3019 and Article 217 of the RPC.

In addition, 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*[7] 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 (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.

Hence, it is enough that the present Informations allege conspiracy in this wise: "conspiring with one another and with . . . and accused private individuals **JANET LIM NAPOLES**..."

Next, on Relampagos, et al.'s motion 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 attached a narrative procedure for the release of PDAF. Besides, it is basic that evidentiary facts need not be alleged in the information.

Third, on the contention that movant cannot be indicted of the present offenses.

On account of the allegation of conspiracy, Napoles' argument is bereft of merit.

Dela Chica v. Sandiganbayan[8] identified the offenders in Section 3(e) of R.A. 3019, to be "... public officers or private persons charged in conspiracy

---

[7] G.R. No. 148965, February 26, 2002.
[8] G.R. No. 144823. December 8, 2003.

with them." In *Napoles v. Ombudsman Morales*, [9] 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.

The same is true with malversation. ".. [A] public officer who is not in charge of public funds or property by virtue of her official position, or even a private individual, may be liable for malversation or illegal use of public funds or property if such public officer or private individual conspires with an accountable public officer to commit malversation or illegal use of public funds or property".[10]

Finally, on the incorporated motion for reduction of bail.

A review of the records reveals that accused Relampagos, Nuñez, Paule and Bare posted cash bond last May 11, 2016, each in accordance with the recommended bail in the Informations (total amount of PhP280,000.00 per accused). Accordingly, the motion is already moot.

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

1. Napoles' ***Consolidated Motion for Judicial Determination of Probable Cause with Urgent Motion to Suspend Proceedings***; and
2. Relampagos, et al.***'s Joint Omnibus Motion [1. Motion for Judicial Determination of Probable Cause; and, 2. Motion for a Bill of Particulars.***

Accordingly, let the corresponding warrants of arrest issue as well as commitment order insofar as Napoles is concerned.

---

[9] G.R. Nos. 213536-37. December 6, 2016, (consolidated with Cambe v. Ombudsman Morales, G.R. Nos. 212014-15, et al.)
[10] Zoleta v. Sandiganbayan, G.R. No. 185224, July 29, 2015, citing Barriga v. Sandiganbayan, 496 Phil. 764, 775 (2005)

Meanwhile, the motion for reduction of bail is **SIMPLY NOTED** for being moot.

SO ORDERED.

LORIFEL L. PAHIMNA
Associate Justice

WE CONCUR:

OSCAR C. HERRERA, JR.
Chairperson

MICHAEL FREDERICK L. MUSNGI
Associate Justice