



**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

SPECIAL THIRD DIVISION

PEOPLE OF THE Criminal Case No. SB-14-
PHILIPPINES, **Plaintiff,** CRM-0238
For: Plunder

- versus -

JUAN PONCE ENRILE, et al.,
Accused.

Present:

CABOTAJE-TANG, P.J.,
Chairperson,
FERNANDEZ, B., J. and
GOMEZ-ESTOESTA,¹ J.

Promulgated:

MAY 3, 2018 

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RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is the *Urgent Motion for Transfer of Custody to the Department of Justice Witness Protection Program* dated March 15, 2018, filed by accused Janet Lim Napoles.²



¹ Sitting as a special member per Administrative Order No. 214-2018 dated April 17, 2018

² pp. 782-787, Vol. XVI, Record

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THE MOTION

Relying on the Certification dated February 27, 2018, issued by the Department of Justice, Witness Protection Security and Benefit Program (DOJ-WPSBP), accused Napoles prays that the Court issue an order directing the Bureau of Jail Management and Penology (BJMP), Camp Bagong Diwa, Bicutan, to transfer custody of her person to the Department of Justice Witness Protection Program (DOJ-WPP). She claims that this is to enable the DOJ to perform its duty to secure her until she shall have testified pursuant to the provisions of Republic Act (R.A.) No. 6981.³ She also claims that there were recorded incidents of harassments, intimidation and threats on her life and security which could be avoided should the DOJ-WPP be allowed to protect her. According to her, she is entitled to have a secure housing facility until the harassments, threats or intimidation disappears or is reduced.⁴

The Court heard the aforesaid motion on March 19, 2018. After the hearing, the Court issued an Order dated March 19, 2018, which reads:⁵

In today's consideration of accused Janet Lim Napoles' "Urgent Motion for Transfer of Custody to the Department of Justice Witness Protection Program," the counsel for the said accused, Atty. Stephen L. David, orally argued on the said motion. The prosecution also orally argued its opposition thereto but requested, and was granted, a non-extendible period of ten (10) days from today within which to file its comment/opposition thereto. The Department of Justice (DOJ) and the Bureau of Jail Management and Penology (BJMP) in Camp Bagong Diwa St., Taguig City are likewise required to file their comment on the said "Urgent Motion for Transfer of Custody to the Department of

³ An Act Providing for a Witness Protection, Security and Benefit Program and for Other Purposes

⁴ pp. 782-787, Vol. XVI, Record

⁵ p. 788, *id.*



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Justice Witness Protection Program” within a non-extendible period of ten (10) days from notice. Thereafter, the said “Urgent Motion for Transfer of Custody to the Department of Justice Witness Protection Program” shall be deemed submitted for resolution.

Furnish the DOJ and the BJMP a copy each of the said urgent motion filed by accused Napoles.

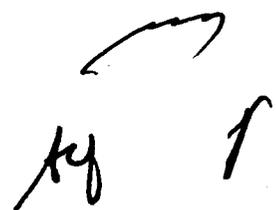
SO ORDERED.

In compliance with the Court’s directive during the hearing on the subject motion to substantiate her allegations of threat and intimidation, accused Napoles submitted an undated Incident Report issued by JCINSP Editha R. Balansay, Warden, Taguig City Jail-Female Dormitory, BJMP. The incident report states that on October 12, 2017, the BJMP Greyhound Team composed of about (40) personnel arrived at the Taguig City Jail and conducted a search in the cell of accused Napoles without coordination and presence of the team on duty; that a body search on accused Napoles was conducted by a male jail officer who was wearing a mask and in full battle gear; that the entire cell was searched and items, including personal belongings and important documents belonging to accused Napoles were confiscated; and, that the CCTV Security Camera was disabled.⁶

THE COMMENT/OPPOSITION OF THE PROSECUTION

In its Comment/Opposition dated March 23, 2018, the prosecution points to the following circumstances which are allegedly grounds to deny accused Napoles’s subject motion: (1) accused Napoles is not a state witness in this case and it

⁶ pp. 791-793, *id.*

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does not entertain any idea of utilizing her as one; (2) accused Napoles's admission under the WPP is merely provisional as opposed to a regular admission under the program; (3) the Supreme Court had already affirmed the Court's Resolution denying accused Napoles's application for bail; hence, the WPP cannot take accused Napoles into its custody because she is detained for a lawful cause.⁷

The prosecution also points out that accused Napoles's disclosure of her provisional coverage under the WPP does not appear to be with a written order from the DOJ; hence, such disclosure amounts to a breach of the confidentiality of her coverage which is sanctioned under Section 7 of Republic Act (R.A.) No. 6891.⁸

THE BJMP'S COMMENT

On April 11, 2018, the BJMP submitted its comment pursuant to the Court's Order dated March 19, 2018. It claims that while the transfer of the custody of accused Napoles to the DOJ is a welcome relief considering the current overcrowding of jails and the severely constrained resources of the BJMP, it nevertheless leaves the subject matter to the sound discretion and wisdom of the Court. It adds that should the Court decide otherwise, the BJMP shall continue to fulfill its responsibility over accused Napoles without any requirement or condition, except perhaps, if the circumstances of the jail become extremely unfit and/or insufficient to meet the security requirements of accused Napoles.⁹

⁷ pp. 2-6, Comment/Opposition; pp. 795-799, *id.*

⁸ p. pp. 1-2, Comment/Opposition; pp. 794-795, *id.*

⁹ pp. 806-807, *id.*

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**THE MANIFESTATION *IN LIEU* OF COMMENT
OF THE DOJ**

On April 17, 2018, the DOJ, through its Secretary Menardo I. Guevarra, filed a "Request for Leave to Admit Manifestation *in Lieu* of Comment" also in compliance with the Court's Order dated March 19, 2018. Pertinent portions thereof read:¹⁰

3. In lieu of comment, the Department hereby manifests that accused Napoles was previously granted a provisional coverage under the Witness Protection, Security and Benefit Program. The same, however, does not confer upon her an actionable right to demand detention or custody under the aforesaid Program.

4. Firstly, her application is still pending, and the provisional coverage merely signifies that she has yet to complete all the requirements and/or that her application is still under evaluation.

5. Secondly, Section 1 of Article IX of the Implementing Rules and Regulations of R.A. No. 6981, otherwise known as the "Witness Protection, Security and Benefit Act," states that the "Program shall not take into custody a witness who is under detention for any lawful cause. However, it shall direct the custodian of the witness to take necessary measures to ensure the safety and security of the witness."

6. It appears herein that accused Napoles is under detention pursuant to a process issued by this Honorable Court. This factual circumstance shall be taken into account by the Department in the final resolution of accused Napoles's application for coverage under the subject Program.

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¹⁰ pp. 811-815, *id.*

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THE RULING OF THE COURT

After a careful examination of the parties' arguments, the Court finds the subject motion bereft of merit.

I. The Implementing Rules and Regulations (IRR) of the very law invoked by accused Napoles negates her claim of entitlement to the transfer of her custody from the BJMP to the DOJ-WPP.

Accused Napoles claims that she has been provisionally admitted to the WPP of the DOJ; hence, "it is imperative that the custody of her person be transferred from the Bureau of Jail Management and Penology, Camp Bagong Diwa, Bicutan, where she is presently held, to the Department of Justice Witness Protection Program ("DOJ-WPP") to enable the DOJ to perform its duty under R.A. No. 6981.

The Court finds the claim bereft of merit.

Section 1 of Article IX of the IRR of R.A. No. 6981 provides:

ARTICLE IX Custody by Other Government Agencies

SECTION 1. Witness Under Detention. — **The Program shall not take into its protective custody a witness who is under detention for any lawful cause.** However, it shall direct the custodian of the witness to take necessary measures to ensure the safety and security of the witness.¹¹

¹¹ emphasis supplied



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In this case, accused Napoles is under detention for a lawful cause. She is charged with plunder which is a non-bailable offense.¹² After it found probable cause, the Court issued a warrant of arrest and a commitment order placing accused Napoles under the custody of the BJMP in Camp Bagong Diwa, Bicutan, Taguig City.¹³

It bears stress that in its Decision promulgated on November 7, 2017 in G.R. No. 224162 entitled "**Napoles vs. Sandiganbayan (Third Division)**," the Supreme Court affirmed the Court's Resolutions denying accused Napoles's application for bail and her motion for reconsideration thereof on the ground that the evidence of guilt against her for plunder is strong.¹⁴ The Supreme Court likewise denied accused Napoles's motion for reconsideration of its said Decision in its Resolution dated February 6, 2018.

Significantly, in his manifestation *in lieu* of comment, DOJ Secretary Guevarra expressly states that the provisional coverage of accused Napoles under the WPP does not confer upon her an actionable right to demand detention or custody under the said program, and, that the fact that she is under detention pursuant to a process issued by the Court, would be taken into consideration in the final resolution of accused Napoles's application for coverage under the WPP.¹⁵

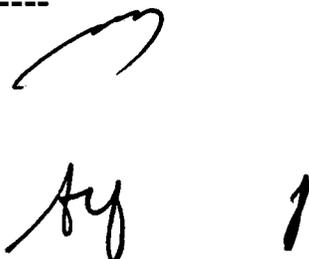
II. The jurisdiction of the Court over the person of accused Napoles continues until the final determination of this case and the exercise thereof cannot be interfered with.

¹² pp. 1-2, Vol. I, Record

¹³ pp. 35-54, 83, 381, Vol. III, Record

¹⁴ pp. 660-680, Vol. XVI, Record

¹⁵ p. 2, Manifestation; p. 812, *id.*

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The Supreme Court had held that once a criminal complaint or information is filed in court, any disposition of the case or dismissal or acquittal or conviction of the accused rests within the exclusive jurisdiction, competence, and discretion of the trial court.¹⁶ Jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated.¹⁷

To be sure, the determination of the place of confinement of an accused pending trial of his/her case by this Court involves the exercise of its jurisdiction over the person of the accused. In this case, the Court already ordered the confinement of accused Napoles at the BJMP in Taguig City; hence, such determination cannot be interfered with unless reversed by the Supreme Court.

Indeed, the only instance where the Court may lose such jurisdiction over the person of an accused before it under R. A. No. 6981 is when the said accused is admitted as a state witness. For, such admission operates as an acquittal. However, the said accused must present his/her certification of admission into the WPP to the public prosecutor, who shall petition the trial court for the discharge of the witness. The court shall then order the discharge and exclusion of said accused from the information.¹⁸

In this case, there is no such petition for the discharge of accused Napoles as a state witness. In fact, accused Napoles's counsel declared during the hearing on the subject motion that he is not asking for the discharge of accused Napoles but for the transfer of her custody from the BJMP to the DOJ pursuant to R.A. No. 6981:

PJ Tang: You are not coming here for the purpose of discharging Mrs. Napoles as a State Witness. You are coming to the Court to seek transfer of Mrs. Napoles from the Bureau of Jail Management and Penology

¹⁶ *Crespo vs. Mogul*, 151 SCRA 462 (1987)

¹⁷ *Flores vs. Montemayor*, 651 SCRA 396 (2011)

¹⁸ *Ampatuan, Jr. vs. De Lima*, 695 SCRA 159 (2013)

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(BJMP) to the custody of the Department of Justice (DOJ).

Atty. David: Your Honors, we are not asking Mrs. Napoles to be discharged in this case. The request is, because we will establish cases not involved in this case, not in any Divisions now pending before the Honorable Sandiganbayan. Not in the First, not in the Third but with respect to the cases which should be established and it is necessary Your Honors that the safety of Mrs. Napoles should be transferred to the Witness Protection Program because they will have constant collaborations, Your Honors.

Also, the prosecution has emphatically declared that it does not entertain any idea of utilizing accused Napoles as a state witness.¹⁹

III. There is no valid reason to allow the transfer of accused Napoles from the BJMP to another detention facility or agency.

In her incident report, the Warden of the Taguig City Jail-Female Dormitory detailed how the BJMP Greyhound Team allegedly conducted a search inside the prison cell of accused Napoles purportedly without coordination with and presence of the team on duty. However, in her comment on the subject motion, the said Warden, on behalf of the BJMP, assured the Court that they shall continue to fulfill their responsibility over

¹⁹ p. 2, Comment/Opposition; p. 795, Vol. XVI, Record



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accused Napoles should the Court deny the subject motion. Notably, the said comment did not mention of any threat on the life of accused Napoles. Thus, the Court does not find any valid reason to allow the transfer of custody of accused Napoles to another facility or agency.

WHEREFORE, accused Janet Lim Napoles's *Urgent Motion for Transfer of Custody to the Department of Justice Witness Protection Program* dated March 15, 2018, is **DENIED** for lack of merit.

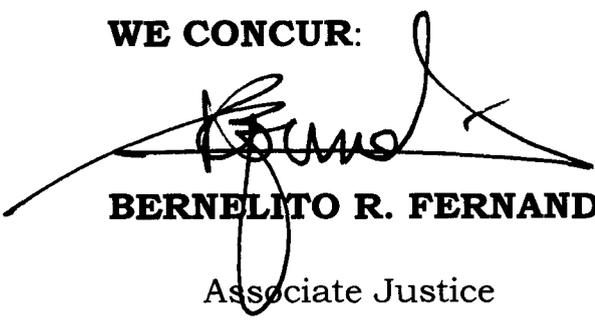
SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG

Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ

Associate Justice


**MA. THERESA DOLORES
C. GOMEZ-ESTOESTA**

Associate Justice