REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

EDGAR D. VALDEZ, et al.,
Accused.

CRIM. CASE Nos. SB-15-CRM-0008

For: Plunder (Violation of R.A. No. 7080, as amended)

Present:

Lagos, *J.*, Chairperson,
Mendoza-Arcega, *J.*, and
Corpus-Mañalac, *J.*

Promulgated:

January 9, 2020

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RESOLUTION

MENDOZA-ARCEGA, *J.*:

This resolves the *Motion to Issue Warrant of Arrest*[1] dated November 18, 2019 filed by the prosecution and the *Comment/Opposition (To the Motion to Issue Warrant of Arrest)*[2] dated December 2, 2019 filed by accused Edgar de Leon Valdez.

In its Motion to Issue Warrant of Arrest, the prosecution asserted that a warrant of arrest should be issued against accused Edgar De Leon Valdez ("Valdez") and Janet Lim Napoles ("Napoles") in view of the Court's denial of their respective demurrers to evidence. Through the denial of the demurrers, the Court found that the evidence of guilt is strong and that the prosecution presented sufficient evidence to establish the guilt beyond

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[1] Records, Volume 11, pp. 387-393.
[2] Id., pp. 411-434.

reasonable doubt of accused Valdez and Napoles for the crime of plunder if uncontroverted. Thus, the basis for granting the application for bail of the accused is no longer subsisting. Consequently, it is legally appropriate that the order granting the application for bail of the accused be considered *functus officio* and that a warrant of arrest be issued against the said accused pursuant to Section 7, Rule 114 of the Rules of Court.[3]

For his part, Valdez maintained that the instant motion is procedurally infirm as for being violative of the three-day notice rule under Sections 4 and 5, Rule 15 of the Rules of Court.[4] The motion likewise violates the policy against forum shopping.

Furthermore, Valdez argued that there is no basis for the recall of the grant bail as the denial of the demurrer to evidence does not mean that the evidence against the accused is strong. The denial of the accused's demurrer to evidence is merely a preliminary examination of the merits of the prosecution's allegations. Lastly, it is the stance of Valdez that he is not in any physical capacity or disposition to pose any risk of flight from any determination that may be rendered by the Court.

THE COURT'S RULING

Upon meticulous scrutiny of the records and a deliberate consideration of the arguments of the parties, the Court finds the instant motion bereft of merit.

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[3] Section 7, Rule 114 of the Rules of Court states:

> "Section 7. Capital offense of an offense punishable by reclusion perpetua or life imprisonment, not bailable. — No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution."

[4] Sections 4 and 5 of the Rules of Court provide:

> "Section 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
> Section 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion."

As regards the procedural issue raised, accused Valdez claimed that his counsel was personally served of the assailed motion only on November 19, 2019. This gave the defense only two (2) days' notice.

The accused's claim is unavailing.

The case of Microsoft Corporation, et al. v. Samir Farajallah, et al.[5] is instructive:

> "In Anama v. Court of Appeals,[6] we ruled that **the three-day notice rule is not absolute. The purpose of the rule is to safeguard the adverse party's right to due process. Thus, if the adverse party was given a reasonable opportunity to study the motion and oppose it, then strict compliance with the three-day notice rule may be dispensed with**.
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> As correctly pointed out by the CA:
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> > 'In the instant case, when the court a quo ordered petitioners to submit their comment on the motion to quash, it was, in effect, giving petitioners their day in court. Thus, while the [three]-day notice rule was not strictly observed, its purpose was still satisfied when respondent judge did not immediately rule on the motion giving petitioners x x x the opportunity to study and oppose the arguments stated in the motion.'"

As can be gleaned from the records, the counsels for accused Valdez and Janet Lim Napoles asked for and was granted a period of ten (10) days from November 21, 2019 to file their respective Comment and/or Opposition to the instant motion filed by the prosecution.[7] Thus, there is no violation of the accused Valdez's right to due process. Giving the accused the opportunity to file the said comment is sufficient compliance with the rudiments of due process.

Anent the allegation of forum shopping, Valdez postulated that with the filing of the present motion, there are now two (2) pending proceedings tackling the matter of the accused's right to bail. The first is the *certiorari* proceeding docketed as G.R. No. 226552 entitled "People of the Philippines v. The Honorable Fifth Division, Sandiganbayan, et al." filed on September 13, 2016 and pending with Supreme Court. The second is the present proceeding with the pending motion for the issuance of a warrant for the

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[5] G.R. No. 205800, September 10, 2014.
[6] G.R. No. 187021, January 25, 2012, 664 SCRA 293.
[7] See: Order dated November 21, 2019, Records, Vol. 11, p. 402.

accused's arrest. The prosecution instituted the first action for the very purpose of assailing the grant of bail to herein accused.[8]

We differ. Jurisprudence extensively discussed the concept of forum shopping, *viz*:[9]

> "Res judicata is the conceptual backbone upon which forum shopping rests. *City of Taguig v. City of Makati*,[10] explained in detail the definition of forum shopping, how it is committed, and the test for determining if it was committed. This test relies on two (2) alternative propositions: *litis pendentia* and *res judicata*. Even then, *litis pendentia* is itself a concept that merely proceeds from the concept of *res judicata*:
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> > *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation* explained that:
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> > > Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.
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> > Jurisprudence has recognized that forum shopping can be committed in several ways:
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> > > (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). (Emphasis in the original)
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> > > ....
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> > The test for determining forum shopping is settled. In *Yap v. Chua, et al.*:

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[8] Records, Vol. 11, p. 414.
[9] Heirs of Marcelo Sotto v. Palicte, G.R. No. 159691, February 17, 2014.
[10] City of Taguig v. City of Makati, G.R. No. 208393, June 15, 2016.

> To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.
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> For its part, *litis pendentia* "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious." For *litis pendentia* to exist, three (3) requisites must concur:
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> > **The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other**.
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> On the other hand, *res judicata* or prior judgment bars a subsequent case when the following requisites are satisfied:
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> > (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is — between the first and the second actions — identity of parties, of subject matter, and of causes of action.[5911]" (Emphasis supplied.)

With the above jurisprudential authority as the basis, the elements of forum shopping or *litis pendentia* are not extant in this case.

Although the parties involved in the *certiorari* proceeding and in the instant motion filed by the prosecution are similar, the rights asserted and relief prayed for are not. the rights asserted and relief prayed for in the instant motion is not identical with the *certiorari* proceeding. Any judgement to be obtained from the *certiorari* proceeding will not likewise affect the resolution of the assailed motion. A special civil action for *certiorari* centralizes on the question of jurisdiction, to wit:[12]

> "To question the jurisdiction of the lower court or the agency exercising judicial or quasi-judicial functions, the remedy is a special civil action for *certiorari* under Rule 65 of the Rules of Court. The petitioner in such cases must clearly show that the public respondent

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[11] Id.
[12] People v. Court of Appeals and Maquiling, G.R. No. 128986 June 21, 1999.

> acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.[13] Grave abuse of discretion defies exact definition, but it generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."[14]
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> It has been held, however, that no grave abuse of discretion may be attributed to a court simply because of its alleged misappreciation of facts and evidence.[15] A writ of *certiorari* may not be used to correct a lower tribunal's evaluation of the evidence and factual findings. In other words, it is not a remedy for mere errors of judgment, which are correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.[16]"

Simply stated, the main issue to be resolved in the *certiorari* proceeding pending before the Supreme Court is whether the Court acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in granting the bail of herein accused. Contrariwise, the present motion seeks the issuance of a warrant of arrest against the accused due to the denial of the demurrers to evidence filed by them. The question of jurisdiction is not the main issue before Us; rather, the main issue is whether Valdez can still enjoy bail after the denial of his demurrer.

Going to the substantive issues, Valdez correctly pointed out that there is no basis to recall the grant of bail.

Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court as required under the conditions hereinafter specified.[17] After accused Valdez posted bail, he religiously attended the proceedings of the instant case

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[13] Id., citing Naguiat v. NLRC, 269 SCRA 564, March 13, 1997; Camlian v. Comelec, 271 SCRA 757, April 18, 1997; Philippine Airlines, Inc. v. NLRC, 276 SCRA 391, July 28, 1997; PMI Colleges v. NLRC, 277 SCRA 462, 1997; Caltex Refinery Employees Association v. Brillantes, 279 SCRA 218, September 16, 1997; Building Care Corp. v. NLRC, 268 SCRA 666, February 26, 1997; Pure Blue Industries, Inc, v. NLRC, 271 SCRA 259, April 16, 1997; Tañada v. Angara, 272 SCRA 18, May 2, 1997; National Federation of Labor v. NLRC, 283 SCRA 275, December 15, 1997; Interorient Maritime Enterprises, Inc. v. NLRC, 261 SCRA 757, September 16, 1996.

[14] Id., citing Commissioner of Internal Revenue v. Court of Appeals, 257 SCRA 200, 209, June 4, 1996, per Kapunan, J.; quoted in Santiago v. Guingona Jr., GR No. 134577, November 18, 1998. See also Lalican v. Vergara, 276 SCRA 518, July 31, 1997; Republic v. Villarama Jr., 278 SCRA 736, September 5, 1997.

[15] Id., citing Teknika Skills and Trade Services, Inc. v. Secretary, of Labor and Employment, 273 SCRA 10, June 2, 1997.

[16] Id., citing Medina v. City Sheriff, Manila, 276 SCRA 133, July 24, 1997; Jamer v. NLRC, 278 SCRA 632, September 5, 1997; Azores v. Securities and Exchange Commission, 252 SCRA 387, January 25, 1996.

[17] Section 1, Rule 114, Rules of Court.

and no risk of flight arose. There is no indication that he has the intention to flee from Our jurisdiction.

Moreover, the nature of petition for bail is different from the proceedings in the demurrer to evidence and the quantum of proof required therein are likewise dissimilar. Th ruling in Napoles v. Sandiganbayan (Third Division)[18] extensively discussed the difference between the said two (2) proceedings, to wit:

> "The stage at which the accused may demur to the sufficiency of the prosecution's evidence is during the trial on the merits itself-particularly, after the prosecution has rested its case.[19] This should be distinguished from the hearing for the petition for bail, in which the trial court does not sit to try the merits of the main case. Neither does it speculate on the ultimate outcome of the criminal charge.[20] The Court has judiciously explained in *Atty. Serapio v. Sandiganbayan*[21] the difference between the preliminary determination of the guilt of the accused in a petition for bail, and the proceedings during the trial proper, *viz.*:
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> > 'It must be borne in mind that in *Ocampo vs. Bernabe*, this Court held that in a petition for bail hearing, the court is to conduct only a summary hearing, meaning such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is merely to determine the weight of evidence for purposes of bail. The court does not try the merits or enter into any inquiry as to the weight that ought to be given to the evidence against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be offered therein. **It may confine itself to receiving such evidence as has reference to substantial matters, avoiding unnecessary thoroughness in the examination and cross-examination of witnesses, and reducing to a reasonable minimum the amount of corroboration particularly on details that are not essential to the purpose of the hearing.**
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> > A joint hearing of two separate petitions for bail by two accused will of course avoid duplication of time and effort of both the prosecution and the courts and minimizes the prejudice to the accused, especially so if both movants for bail are charged of having conspired in the commission of the same crime and the prosecution adduces essentially the same evident against them. However, in the cases at bar, the joinder of the hearings of the petition for bail of

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[18] G.R. No. 224162, February 06, 2018.
[19] Id., citing Rules of Court, Rule 119, Section 23.
[20] Id., citing People v. Amondina, 292-A Phil. 86, 91 (1993).
[21] 444 Phil. 499 (2003).

petitioner with the trial of the case against former President Joseph E. Estrada is an entirely different matter For, with the participation of the former president in the hearing of petitioner's petition for bail, the proceeding assumes a completely different dimension. The proceedings will no longer be summary. As against former President Joseph E. Estrada, **the proceedings will be a full-blown trial which is antithetical to the nature of a bail hearing.** x x x With the joinder of the hearing of petitioner's petition for bail and the trial of the former President, the latter will have the right to cross-examine intensively and extensively the witnesses for the prosecution in opposition to the petition for bail of petitioner. If petitioner will adduce evidence in support of his petition after the prosecution shall have concluded its evidence, the former President may insist on cross-examining petitioner and his witnesses. The joinder of the hearing of petitioner's bail petition with the trial of former President Joseph E. Estrada will be prejudicial to petitioner as it will unduly delay the determination of the issue of the right of petitioner to obtain provisional liberty and seek relief from this Court if his petition is denied by the respondent court. x x x[22]'

The Court has previously discussed in our Decision dated November 7, 2017 that the trial court is required to conduct a hearing on the petition for bail whenever the accused is charged with a capital offense. While mandatory, the hearing may be summary and the trial court may deny the bail application on the basis of evidence less than that necessary to establish the guilt of an accused beyond reasonable doubt. In this hearing, **the trial court's inquiry is limited to whether there is evident proof that the accused is guilty of the offense charged.**[23] This standard of proof is clearly different from that applied in a demurrer to evidence, which measures the prosecution's entire evidence against the required moral certainty for the conviction of the accused.[24]"

To reiterate, the inquiry during the bail hearing is merely summary in nature and does not in any way pre-empt the outcome of the present case, while in the hearing for demurrer to evidence, the court conscientiously measures the evidence proffered by the prosecution. As correctly argued by the defense, the denial of the accused's demurrer to evidence is merely a preliminary examination of the merits of the prosecution's allegations. To be sure, Section 7, Rule 114 of the Rules of Court states that no person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life

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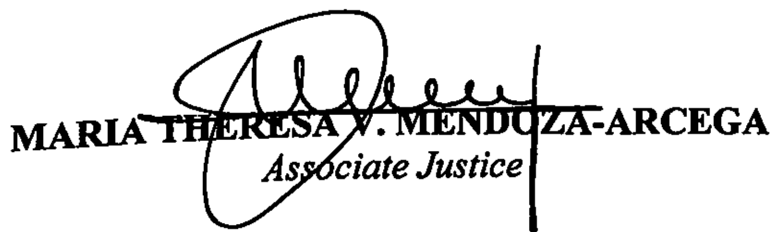
[22] Id. at 540-541.
[23] Id., citing Rules of Court, Rule 114, Section 7.
[24] Id., citing People v. Hon. Cabral, 362 Phil. 697 (1999); Siazon v. Hon. Presiding Judge of the Circuit Criminal Court, etc., et al., 149 Phil. 241, 249 (1971); Pareja v. Hon. Gomez and People, 115 Phil. 820 (1962).

imprisonment, shall be admitted **to bail** when evidence of guilt is strong, regardless of the stage of the criminal prosecution. The prosecution's reliance on the said provision is misplaced as it applies only to an application for bail and **NOT** to a demurrer to evidence.

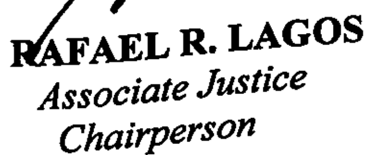
WHEREFORE, premises considered, the *Motion to Issue Warrant of Arrest* dated November 18, 2019 filed by the prosecution is **DENIED** for utter lack of merit.

SO ORDERED.



MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:



RAFAEL R. LAGOS
Associate Justice
Chairperson

MARYANN E. CORPUS-MAÑALAC
Associate Justice