

Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City  
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Second Division

PEOPLE OF THE PHILIPPINES,  
*Plaintiff,*

Crim. Case No. 27969

-versus-

Present:  
Herrera, Jr., J. *Chairperson*  
Musngi, J.  
Malabaguio, J.

MAXIMO A. BORJE, JR., ET AL.,  
*Accused,*

Promulgated:  
July 18, 2022 ant

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**RESOLUTION**

**HERRERA, JR., J.:**

This resolves the following:

- 1) ***Motion to Fix Bail***<sup>1</sup> dated May 16, 2022 filed by accused Conchita N. Dela Cruz, through counsel; and
- 2) ***Very Urgent Omnibus Motion to Lift Warrant of Arrest and Order the Reinstatement of the Conduct of Reinvestigation Pursuant to the Prosecutor's Supplemental Comment dated July 1, 2004 and Resolution of this Honorable Court dated January 20, 2005***<sup>2</sup> dated May 31, 2022 filed by accused Romeo C. Fullido and Nonette H. Fullido, through counsel.

The plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman, filed a ***Consolidated Comment and Opposition (Re: (i) accused Conchita N. Dela Cruz's Motion to Fix Bail dated 16 May 2022 and (ii) accused Romeo C. Fullido and Nonette H. Fullido's Very Urgent Omnibus Motion to Lift Warrant of Arrest and Order the Reinstatement of the Conduct of Reinvestigation Pursuant to the Prosecutor's***

<sup>1</sup> Record, Vol. 6, pp. 4031-4075

<sup>2</sup> Record, Vol. 7, pp. 159-255

*ant*

*ant*

*M*



**Supplemental Comment dated July 1, 2004 and the Resolution of this Honorable Court dated June 8, 2022.<sup>3</sup>**

The Court will first address the **Motion To Fix Bail** of accused Dela Cruz.

Accused Dela Cruz is charged with **Plunder** which is punishable by *reclusion perpetua*.

**Section 13, Article III of the 1987 Constitution** states:

“SECTION 13. All persons, except those charged with offenses **punishable** by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.”

In connection thereto, **Section 7, Rule 114 of the Revised Rules of Criminal Procedure** provides.

“SECTION 7. **Capital offense or 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* of life imprisonment, shall be admitted to bail when evidence of guilt is strong regardless of the stage of the criminal prosecution.”

It settled that, pursuant to the above provisions, before an accused charged with an offense punishable by *reclusion perpetua* may be allowed to post bail, he should file a petition for bail and the Court, after conducting a hearing, determines that the evidence of guilt is not strong. It is only when the finding is that the evidence of guilt is not strong that the court may fix bail for the provisional liberty of the accused.

Instead of a petition for bail, accused Dela Cruz filed a **Motion to Fix Bail**, but the Court cannot fix bail because the offense charged is punishable by *reclusion perpetua*.

Accused Dela Cruz contends that there exist humanitarian and special considerations to allow her to post bail to secure her temporary liberty pending the trial of the instant case. In support thereof, she essentially alleges that:

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<sup>3</sup> Id, pp. 434-450

*apr*

*A*

*W*



"10. However, there exist humanitarian considerations which justify the accused's temporary liberty pending the trial and resolution of above-entitled case.

11. First and foremost, it must be emphasized that due to the prolonged resolution of the present case the accused had already aged to the point that she has already become a senior citizen or sixty-seven (67) years of age. As proof, attached is the Senior Citizen of the accused which is marked as **Annex "C"**.

12. Considering the increasing frailty that comes with old age and the uncertainties brought about by the pandemic, the detention of the accused would be detrimental to her health which will only frustrate the true purpose of bail which is to guarantee the appearance of the accused at trial."<sup>4</sup>

Accused Dela Cruz cites the ruling in the case of **Juan Ponce Enrile v. Sandiganbayan, et al.**,<sup>5</sup> where the Supreme Court declared, among others, that:

**"Bail for the provisional liberty of the accused regardless of the crime charged, should be allowed independently of the merits of the charge, provided his continued incarceration is clearly shown to be injurious to his health or to endanger his life. Indeed, denying him bail despite imperiling his health and life would not serve the true objective of preventive incarceration during the trial."**

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It is relevant to observe that granting provisional liberty to Enrile will then enable him to have his medical condition be properly addressed and better attended to by competent physicians in the hospitals of his choice. This will not only aid in his adequate preparation of his defense but, more importantly, will guarantee his appearance in court for the trial."

Unlike in the case of **Enrile**, accused Dela Cruz has not clearly shown that her incarceration will be injurious to her health or endanger her life. She merely makes a sweeping declaration that being 67 years old, "the increasing frailty that comes with old age and the uncertainty brought about by the pandemic would be detrimental to her." Under the circumstances, for the Court to fix bail for her provisional liberty solely because of such declaration will render meaningless the provisions of **Section 13, Article III of the 1987 Constitution** and **Section 7, Rule 114 of the Rules of Court**.

<sup>4</sup> Record, Vol. 6, p. 4033

<sup>5</sup> G.R. No. 213847, August 18, 2015



With respect to the ***Very Urgent Omnibus Motion to Lift Warrant of Arrest and Order the Reinstatement of the Conduct of Reinvestigation, etc.*** filed by accused Romeo C. Fullido and Nonette H. Fullido, the said accused invoke the ***Resolution***<sup>6</sup> of the Court dated January 20, 2005 dismissing the case for lack of probable cause. However, said ***Resolution*** was assailed by the plaintiff in a petition for certiorari filed with the Supreme Court and docketed therein under G.R. No. 170046. The Supreme Court, in said G.R. No. 170046, rendered a ***Decision***<sup>7</sup> dated December 10, 2014 declaring in the dispositive portion thereof:

“**WHEREFORE**, premises considered, the instant petition is **GRANTED**. The assailed Resolutions dated January 20, 2005 and October 12, 2005 of the Sandiganbayan in Criminal Case No. 27969 are **SET ASIDE**. The Resolution dated January 7, 2004 of the Ombudsman in OMB-C-C-02-0507-H, finding probable cause to indict respondents for the crime of plunder **AFFIRMED**.

**SO ORDERED.**”

As it is, the Supreme Court already affirmed the ***Resolution*** of the Office of the Ombudsman finding probable cause against the accused in this case, including Romeo C. Fullido and Nonette H. Fullido. Hence, the ***Very Urgent Omnibus Motion, etc.*** has been rendered moot and academic.

WHEREFORE, premises considered, the Court resolves as follows:


- 1) To deny the ***Motion To Fix Bail*** dated May 16, 2022 filed by accused Conchita Dela Cruz, through counsel; and
- 2) To deny the ***Very Urgent Omnibus Motion to Lift Warrant of Arrest and Order the Reinstatement of the Conduct of Reinvestigation Pursuant to the Prosecution’s Supplemental Comment Dated July 1, 2004 and Resolution of this Honorable Court Dated January 20, 2005*** dated May 31, 2022 filed by accused Romeo C. Fullido and Nonette H. Fullido, through counsel.

<sup>6</sup> Record, Vol. 4, pp. 2168-2188

<sup>7</sup> Record, Vol. 6, pp. 3610-3619

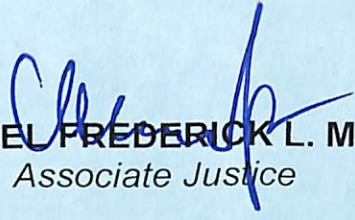




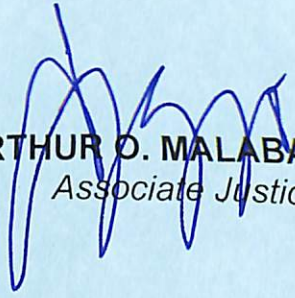


**OSCAR C. HERRERA, JR.**  
Chairperson  
Associate Justice

We concur:



**MICHAEL FREDERICK L. MUSNGI**  
Associate Justice



**ARTHUR O. MALABAGUIO**  
Associate Justice