



Republic of the Philippines

Sandiganbayan

Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 09 August 2022.

Present:

Justice ZALDY V. TRESPESES-----Acting Chairperson

Justice GEORGINA D. HIDALGO----- Member

Presiding Justice AMPARO M. CABOTAJE-TANG -----Member*

The following resolution was adopted:

Crim. Case No. SB-22-CRM- 0117 - People vs. MARC RED ARCADIO MARINÑAS, ET AL.

This resolves the following:

1. Accused Asliyah A. Maruhom's "MOTION FOR RECONSIDERATION" dated and electronically filed on July 25, 2022;¹ and
2. Prosecution's "COMMENT/OPPOSITION (on accused Maruhom's Motion for Reconsideration) dated and electronically filed on August 2022."²

TRESPESES, J.

This resolves accused Asliyah Maruhom's Motion for Reconsideration of the Resolution dated 18 July 2022 and the prosecution's Comment/Opposition thereto.

ACCUSED MARUHOM'S MOTION

Accused Maruhom assails the Resolution dated 18 July 2022 and argues that the validity or legality of the issuance of warrant of arrest can still be questioned even if an accused had already posted bail prior to the filing of a motion to quash warrant of arrest. In support thereof, accused invokes *Borlongan, Jr. v. Pena*, *Almonte v. Bien* and *Okabe v. Gutierrez* wherein the Supreme Court held that the posting of bail shall not be deemed a waiver of the right to assail the issuance of warrant of arrest. Since the right to challenge

¹ Record, Vol. 6, pp. 292-314.

² Record, Vol. 6, pp. 443-451.

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the validity or legality of the issuance of a warrant is available after the posting of bail, the motion filed by accused cannot be treated as a motion for reconsideration.

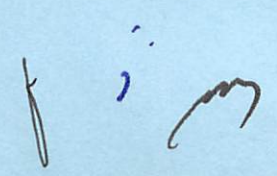
Accused further alleges that the documents attached to the information are not sufficient to establish probable cause that herein accused participated in the commission of the crime charged. Her name was never mentioned in any of Chiong's and Ignacio's Sinumpaang Salaysay and even in the transcript of stenographic notes of the Senate Hearing by the Committee on Women, Children, Family Relations and Gender Equality. Also, the Complaint-Affidavit filed by the FIO only stated that she processed and allowed the entry of one Lin Hongquan, while the names of the Malaysian nationals Jeremiah Ting Ding Peng and Vivian Lau Yun Siu were never mentioned therein. Whereas, in the Complaint-Affidavit and Supplemental Complaint-Affidavit filed by the NBI-SAU, it simply made a sweeping allegation of conspiracy. It never mentioned any act of accused on how she took part in the perpetration of the alleged conspiracy.

She adds that in the judicial determination of probable cause, the Court is guided by the evidence on record. Hence, it is not limited to the evidence submitted by the prosecution but can also examine the counter-affidavits of accused and their witnesses. In here, accused admittedly conducted routine verification on the Malaysian nationals Jeremiah Ting Ding Peng and Vivian Lau Yun Siu and that she required them to present the necessary travel or immigration documents.

Finally, accused contends that while the Ombudsman has the full discretion to determine whether or not a criminal case should be filed, once the case has been filed with the Sandiganbayan, the said Court has full control of the case. Thus, the Court has the authority to dismiss the case against accused considering that the evidence presented by the prosecution does not warrant her inclusion in the charge.

THE PROSECUTION'S COMMENT

The prosecution counters that the issues assailed in the motion were already resolved in the assailed Resolution. It points out that the Court has already made a judicial determination of the existence of probable cause for the issuance of warrant of arrest. Also, on accused's argument that the Ombudsman's documents do not demonstrate her participation on the scheme, the prosecution states that the Court has ruled that the presence or absence of



the elements of the crime charged is evidentiary in nature and better ventilated during the trial on the merits.

OUR RULING

We **deny** the motion for lack of merit.

After a perusal of the arguments raised by accused, the Court finds no reason to overturn its earlier findings. Notably, accused merely repleads the same arguments in her motion to quash warrant of arrest, which have already been passed upon in the assailed resolution.

In the instant motion, accused Maruhom puts emphasis on the Court's ruling that treated her motion as an MR and contends that it was an error to rule that there is no warrant that could be quashed since the issuance thereof was withheld when accused posted bail. To back her argument, accused invokes *Borlongan, Jr. v. Pena, Almonte v. Bien* and *Okabe v. Gutierrez* where the Supreme Court held that the posting of bail by an accused shall not be deemed a waiver of the right to assail the issuance of a warrant of arrest.

A reading of the jurisprudence cited by accused shows that in those cases, there were irregularities in the court's conduct of determining probable cause for the issuance of warrant of arrest. In *Borlongan*,³ the judge blindly followed the certification of a city prosecutor as to the existence of probable cause with respect to all the petitioners. In *Almonte*,⁴ the respondent judge denied outright accused's motion, applying the ruling in *Rolito Go v. Court of Appeals*, on the sole ground that once an accused posted his bail bond, he thereby waived his right to question any defect in the issuance of the warrant of arrest. In the cited case, the conduct of preliminary investigation by the MCTC judge, petitioner and her husband were deprived of their right to due process because they were not given copies of the complaint for robbery, nor were they summoned by the respondent judge to appear before him and present their counter-affidavits and other supporting documents. In *Okabe*,⁵ the respondent judge determined probable cause based only on the affidavit complaint, the resolution of the investigating prosecutor and the Information.

Obviously, the circumstances in the three cases are not obtaining in the present case. In here, accused merely questioned the basis of the Court's finding of probable cause that were allegedly not supported by evidence and

³ G.R. No. 143591, 5 May 2010 (634 PHIL 179-207).

⁴ A.M. No. MTJ-04-1532, 27 June 2005.

⁵ G.R. No. 150185, 27 May 2004 (473 PHIL 758-786).

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thus, could properly be the subject of a motion for reconsideration of the Court's resolution finding probable cause. There was no allegation of any irregularity in the manner by which the Court determined the same.

Moreover, it bears to stress that accused Maruhom's motion to quash warrant of arrest was denied not on the ground that accused posted bail and no warrant was issued against her that could be quashed but because the Court maintains its finding of probable cause. Of course, the Court is mindful of the rule that an application for admission to bail shall not bar the accused from challenging the legality of the warrant issued. It is for this reason that the Court detailed the evidence assessed which it deemed sufficient in the determination of judicial probable cause for the issuance of warrant of arrest. The pertinent portion of the assailed resolution reads:

In this case, accused Maruhom is charged with violation of Sec. 3(e) of R.A. No. 3019. It bears to point out that the Information alleged that accused Maruhom together with the other accused *acted in conspiracy* with one another in committing an unlawful scheme of allowing entry of foreign passengers into the country without going through regular and stringent profiling or screening process for a fee. Thus, in the determination of probable cause, the Court is not limited to the individual acts of each accused but the entirety of the supporting evidence, whether there is reasonable belief that accused's independent acts are connected and cooperative with the acts of other co-accused indicating a common purpose and resulted in the accomplishment of the unlawful scheme.

In here, attached to the Information are the following documents, which form part of the records of this case, to wit:

1. Consolidated Resolution issued by the Ombudsman in OMB-C-C-20-0147 dated 21 March 2022 finding probable cause to indict accused of violation of Sec. 3(e) of R.A. No. 3019;
2. Complaint-Affidavit filed by the Field Investigation Office – Office of the Ombudsman dated 26 October 2022 with attached Annexes A to EEE. As to accused Maruhom, she was alleged to have processed and allowed the entry of foreign passenger posted in the Viber group chats who paid *pastillas* money and availed the VIP services;
3. Counter Affidavits of accused Deon Carlo Garcia Albao, Manuel Sarmiento III, Paul Erik Closa Borja, Carl Jordan Cabanela Perez, Chevy Chase Naniong, Clint John Querol Simene, Maria Victoria Cabuello Jogno, Glenn Ford S. Comia, Arlan Edward D. Mendoza, Hamza Usudan Pacasum, Brand Allen Lim So, Cecille Jonathan Pacheco Orozco, Ralph Ryan M. Garcia, Salahudin P. Hadjinoor, Anthony D. Lopez, Vincent Bryan Del Rosario Allas, Aurelio III S. Lucero,

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George V. Bituin, *Asliyah Alonto Maruhom*, Rodolfo Imperial Magbuhos, Jr., Francis Dennis T. Robles, Liya Wu, John Kessler B. Cortez, John Michael Sitchon Angeles, Abdul Fahad Guro Calaca, Danieve Hije Binsol, Phol Bendana Villanueva, Cherry Pie P. Ricolcol, Aira G. Inoue, Frances Meeka Enrique Flores, Abdulhafez Dela Tonga Hadjibasher, John Derrick Go, Gabriel Ernest Mitra Estacio, Mark Dollete Macababbad, Benlando Guevarra, Rován Rey S. Manlapas, Erwin Santibañez, Ortañez, Sadruddin Cruz Usudan, Grifton San Pedro Medina, Danilo Caro Deudor, Mohammad Sahary Bagul Lomondot, Dimple Mahyumi R. Mallari;

4. Complaint Affidavit dated 22 September 2020 and the Supplemental Complaint Affidavit dated 3 November 2020 of the Special Action Unit (SAU), Investigation Service (InvS), National Bureau of Investigation;
5. Letter dated 19 August 2020 addressed to Ombudsman Samuel Martires forwarding the initial investigative findings of the SAU; Letter dated 12 October 2020, forwarding the Verified Complaint-Affidavit of the SAU to the Ombudsman, and Letter dated 06 November 2020 addressed to Ombudsman Martires on additional investigative findings against the leaders and members of the Bureau of Immigration "*Pastillas* Group" together with attachments;
6. *Sinumpaang Salaysay* of IO II Jeffrey Dale Salameda Ignacio dated 19 September 2020 with attached Annexes A to H; Two *Karagdagang Salaysay* of Ignacio dated 21 September 2020; *Pangatlong Karagdagang Salaysay* dated 3 October 2020 with Annexes A to I;
7. Travel records of 173 out of the 194 foreign nationals in connection with the investigation on the *Pastillas* Scheme;
8. BI Personnel Orders, Service Records, PDS, Appointments, Oath of Office, Position Description Forms, POD Directive, Certifications of Assumption to Duty, Memorandum, Certifications, Engagement of Services, Contracts of Service;
9. Affidavit of Allison Aguas Chiong and his *Sinumpaang Salaysay* dated 27 April 2020 with attached Annexes A to F. The Annexes include a screenshot of Viber messages containing schedules and list of arriving "VIP" passengers. The list mentioned the two Malaysian nationals whose entry to the Philippines were processed by accused Maruhom;
10. Sworn Statement of Lai Yu Cian dated 3 February 2020;
11. Various affidavits of Marinas, Erwin Ortanez, Anthony D. Lopez, Counter Affidavit of Danieve Hije Binsol, Dimple Mahyumi R. Mallari;

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12. Transcript of Stenographic Notes of the Senate Hearing by the Committee on Women, Children, Family Relations and Gender Equality on January 28, 2020, February 17, 2020, February 20, 2020, March 2, 2020.

After thorough evaluation of the aforesaid documents pursuant to Sec. 6(a), Rule 112 of the Revised Rules of Criminal Procedure, the Court is satisfied of the existence of probable cause for the issuance of warrant of arrest. It bears to stress that the purpose of judicial determination of probable cause is to address the necessity of placing accused under custody in order not to frustrate the ends of justice.⁶

In so far as accused Maruhom is concerned, the letter addressed to Ombudsman Martires⁷ from Vicente A. De Guzman III, Deputy Director for Investigation Service, NBI, Manila and Supplemental Complaint-Affidavit dated 3 November 2020,⁸ show that she was identified as one of those who allowed entry into the Philippines of Malaysian nationals who paid *pastillas* money. The List of Travel Records dated 13 May 2020 confirmed that accused processed the entry of Jeremiah Ting Ding Peng and Vivian Lau Yun Siu.⁹ The screenshots of Viber messages¹⁰ attached to the *Sinumpaang Salaysay* of Allison Chiong¹¹ reveals the lists of the flight details and names of the passengers who paid *pastillas* money, which include the names of Jeremiah Ting Ding Peng and Vivian Lau Yun Siu.¹²

The above-quoted documents were found sufficient to support a finding of probable cause to place accused under custody. It is settled jurisprudence that before issuing warrants of arrest, judges merely determine personally the probability, not the certainty, of guilt of an accused.¹³ In *Sandiganbayan (Second Division)*,¹⁴ the Supreme Court held 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 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

⁶ Record, Vol. 6, pp. 187-196.

⁷ Vol. 1A, pp. 19-45

⁸ Vol. 1A, pp. 46-67

⁹ Vol. 1A, p. 359, 362.

¹⁰ Vol. 1B, p. 326.

¹¹ Vol. 1B, pp. 291 to Vol. 1B-311

¹² Vol. 1A, p. 359, 362.

¹³ *De Joya v. Marquez*, G.R. No. 162416, 31 January 2006 (516 PHIL 717-724).

¹⁴ G.R. No. 235480, 27 January 2021.

cause, it suffices that it is believed that the act or omission complained of constitutes the very offense charged.

It should be pointed out that in denying the motion to quash warrant of arrest, the Court is not prejudging accused Maruhom as guilty of the offense charged in the information in conspiracy with the other accused. The absence or presence of conspiracy is factual in nature and involves evidentiary matters that should be threshed out during the trial on the merits.¹⁵ During this stage, the prosecution must prove beyond reasonable doubt not only accused's guilt but also that she acted in conspiracy with the rest of the other accused in the commission of the offense charged and to disprove the existence of conspiracy.

Finally, the Court does not find merit in accused's contention that since the Court had acquired full control of the case with the filing of the Information, it can dismiss the same against her because the evidence presented by the prosecution allegedly does not warrant her inclusion in the charge.

In *De Lima v. Cabanes*,¹⁶ the Supreme Court held that a judge's determination of probable cause is different from a prosecutor's determination. Trial courts do not act as an appellate court of the prosecutor. They make an independent assessment of the evidence to determine whether a warrant of arrest should be issued. In here, the Court already found that the evidence attached to the Information are sufficient to place accused under custody and thus, the Court is not inclined to dismiss the case against accused.

In view of the foregoing, the Court finds no cogent reason to warrant the reconsideration of the assailed resolution.

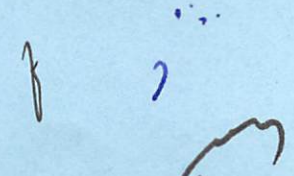
WHEREFORE, premises considered, accused Asliyah A. Maruhom's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

Quezon City, Philippines.

¹⁵ *People v. Go*, G.R. No. 168539, 25 March 2014 (730 PHIL 362-377).

¹⁶ G.R. Nos. 219295-96 & 229705, 14 July 2021.



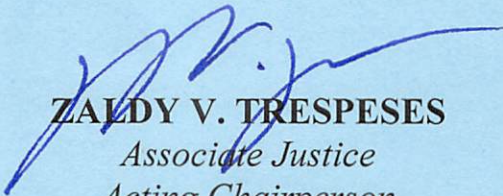
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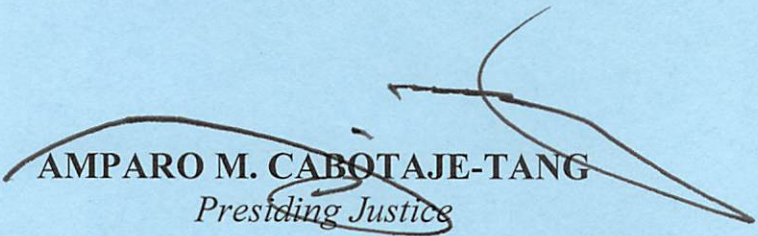
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ZALDY V. TRESPESSES
Associate Justice
Acting Chairperson

WE CONCUR:


GEORGINA D. HIDALGO
Associate Justice


AMPARO M. CABOTAJE-TANG
Presiding Justice

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