



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-21-CRM-0010 & 0011
For: Violation of Section 3(e)
of R.A. No. 3019, as amended

- versus -

Present:

NICANOR E. FAELDON, ET AL.,
Accused.

LAGOS, J., *Chairperson,*
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:

x ----- September 14, 2022 ----- x
Sept 14, 2022

RESOLUTION

CORPUS-MAÑALAC, J.:

Before this Court is the *MOST RESPECTFUL AND VERY URGENT MOTION TO BE ALLOWED VERY BRIEF OVERSEAS BUSINESS TRAVEL/S* dated September 12, 2022 filed by accused Nicanor E. Faeldon, through counsel, on even date, praying that he be permitted to travel abroad from September 16 to 30, 2022 and from October 15 to 22, 2022.

The allegations therein are hereby reproduced *verbatim*:

1. In his former capacity as the Customs Commissioner, herein Accused was able to forge solid business relationships with foreign partners and other stakeholders who were and still are all willing to help in the improvement of our country's economy. It is in such former capacity that herein Accused was informally tapped to touch-base once again with those foreign partners and other stakeholders;
2. As strong business relationships are built and fostered on face-to-face and personal encounters and firm hand-shakes, herein Accused is set, and with this Honorable Court's kind permission, to leave on the following dates/countries:

United States of America – September 16-30, 2022 (PR126 – Mnl-Jfk, Return Flight details to follow).

South Korea – October 15-22, 2022 (Flight details to follow).

mf

x ----- x

3. Herein Accused shall fully comply with all of the conditions to be imposed/required by this Honorable Court. (Underscoring in the original)

He further avers that “[o]n his honor, as a former [s]oldier and a Marine, he states, commits and undertakes” that, *viz.*: (a) he is not a flight risk; (b) he has no reason or intention to flee from the jurisdiction of this Court; (c) his entire family and means of livelihood are in the Philippines, thus he has no reason to reside elsewhere; (d) he has timely and actively participated in all the proceedings and complied with all of this Court’s order and resolutions; and (e) he shall immediately inform the Court of his arrivals within 24 hours therefrom.

On the same day, the prosecution filed its *OPPOSITION* dated September 12, 2022, praying that the motion be denied for lack of merit, on several grounds, *viz.*: (a) the failure of accused-movant to show the necessity and urgency of the travel requested, including in what capacity he is meeting with such alleged foreign partners and who he is representing in the said meetings, and why the same should be conducted face to face instead of online or virtual conference and for such a long period; (b) the failure to mention the names of the said foreign partners and stakeholders, as well as the nature of businesses involved; (c) there was no mention of the travel itinerary abroad, *i.e.*, the place where he would be staying in, his contact details while outside the country, the venue of the meetings abroad, and the contact details of his alleged partners; (d) the failure of his counsel to execute an affidavit of undertaking to guarantee his return to the country, as the risk of flight, as well as the failure to attach a copy of his passport; (e) he has pending complaints for investigation before the Office of the Ombudsman; (f) he and his family, as well as their means of livelihood, could easily be relocated abroad should he choose to abscond; and (g) the motion should have been filed with leave of court and on two separate occasions as the intended travels are in two different countries and during two different periods.

On September 13, 2022, the accused-movant filed a *REPLY* dated September 12, 2022, alleging that he is willing to post the travel bond in such amount that the Court may determine; that no immediate member of his family will join him on the requested foreign travels; and that the U.S.A. and South Korea are countries which have an extradition treaty with the Philippines.

To fully capture the accused-movant’s disposition in his reply, the other allegations therein are hereby reproduced *verbatim*:

3. In opposing our Motion on the ground that it lacks material particulars, the People overlooked the fact that we iterated and reiterated in our said Motion that the Accused/Movant would fully comply with ALL the conditions/requirements this Court would impose;



x-----x

4. Herein Accused/Movant could not as yet furnish the Court with exact details of his itinerary, precisely because in all candor, he was called to action as a “backdoor facilitator” with foreign partners and other stakeholders only over the weekend of September 10-11, 2022;
5. This also explains why Accused/Movant does not have a return flight particulars [*sic*], because he does not know which foreign partner or stakeholder would agree to meet with him on such short notice, and if so, when and where such meeting/State would be held. Since it is the Accused/Movant who has requested and is still requesting for very short-notice meetings with those foreign partners and stakeholders, it is he who should adjust;
6. Without meaning to sound self-important, perhaps the People may not be aware that highest-level “potential trade and investment talks”, even informal ones, may trigger regulations necessitating disclosure/s due to market sensitivity, and thus, backdoor facilitations are most-often [*sic*] done confidentially and informally, among old friends;
7. As regards the People’s impression that zoom meetings may suffice in high-level potential trade and investment talks, Accused/Movant humbly borrows and re-phrases the succinct business expression “you cannot fax, text or zoom a firm-handshake” [*sic*];
8. While Accused/Movant would rather stay in the safety of his home and attend to the rearing of his very young children, the greater demands of public service, even as an informal backdoor facilitator, is a loud and insuperable all-hands-on-deck call to once again stand-up and be counted upon;
9. Finally, Accused/Movant reiterates, commits and undertakes that he will fully comply with ALL the conditions/requirements this Court would impose in the event the ATO [Allow Travel Order] prayed for is granted. (Emphasis, capitalization and underscoring in the original)

RULING

The motion is bereft of merit.

In his reply, the accused-movant asseverates that, citing *Sy v. Sandiganbayan*,¹ “[w]hile an accused requesting for permission to travel abroad has the burden to show the need for his travel, such permission must not be unduly withheld if it is sufficiently shown that allowing his travel would not deprive the court of its exercise of jurisdiction over his person.”

It has conveniently omitted, however, the fact that, in *Sy*, the Supreme Court enunciated the standards which should “serve to guide the bar and especially the bench in deciding similar cases wherein they are called upon to rule on whether to issue, upon motion, an allow departure order without unduly restricting an accused’s constitutional right to travel,” thus:

¹ G.R. No. 237703, 3 October 2018.

x-----x

Indeed, whether the accused should be permitted to leave the jurisdiction is a matter addressed to the court's sound discretion. Nevertheless, such discretion must not be arbitrarily exercised. **In deciding the matter, the court must delicately balance, on the one hand, the right of the accused to the presumption of his innocence and the exercise of his fundamental rights, and on the other hand, the interest of the State to ensure that the accused will be ready to serve or suffer the penalty should he be eventually found liable for the crime charged.**

X X X X

While an accused requesting for permission to travel abroad has the burden to show the need for his travel, such permission must not be unduly withheld if it is sufficiently shown that allowing his travel would not deprive the court of its exercise of jurisdiction over his person, [x x x]. **In making such assessment, courts should act judiciously, and thus, base their findings on concrete variables, such as the purpose of the travel, the need for similar travels before the criminal case was instituted, the ties of the accused in the Philippines, as well as in the destination country, the availability of extradition, the accused's reputation, his travel itinerary including confirmed tickets to return to the Philippines, the possibility of reporting to the Philippine embassy in the foreign country, and other similar factors.** While said requests should be resolved on a case-to-case basis, it may not be amiss to state that courts should always be mindful that an accused is afforded the constitutional presumption of innocence, and hence, entitled to the entire gamut of his rights, subject only to reasonable restrictions that are based on concrete facts, and not mere speculation. (Additional emphasis supplied)

A perusal of accused-movant's motion and reply shows that no clear and definite purpose of the requested foreign travels has been presented therein. Instead, his submissions offer the rather vague claims that he was purportedly tapped as an "informal backdoor facilitator"² last September 10-11, 2022 to meet with "foreign partners and other stakeholders"³ who are supposedly "all willing to help in the improvement of our country's economy."⁴

Pressed with the details, he did not even bother to cite any specifics in his reply. He explicitly admits therein, however, that apart from the lack of travel itinerary and return flight details, "he does not know which foreign partner or stakeholder would agree to meet with him on such short notice, and if so, when and where such meeting/State would be held."⁵

Indeed, even the alleged purpose of the requested foreign travels undeniably appears to be uncertain. Therefore, absent a concrete and substantiated purpose, the Court cannot simply rely on his bare claim of

² Reply, p. 2 (paras. 4 and 8).

³ Motion, p. 1.

⁴ *Id.*

⁵ Reply, p. 2 (para. 5).

x ----- x

necessity, more so that he is now a private citizen, having been separated from the service since September 5, 2019.⁶ Such a mere assertion that the requested foreign travels are necessary for him to execute his alleged role as an “informal backdoor facilitator” is utterly insufficient in this instance.

Thus, on this score alone, the motion may be denied.

Furthermore, the reputation of the accused-movant as a former escapee creates serious doubts on whether he would return to the Philippines if permitted to travel abroad. The Court takes notice that he had twice escaped from custody in the past, after having been involved in the so-called Oakwood mutiny staged by junior military officers in July 2003, *viz.*: first, in December 2005 but recaptured a month later; and, second, in November 2007 and surrendering in July 2010.⁷

Apart from the simple assurance in his submissions that he will comply with all the conditions that this Court will impose should the travel request be granted, he has not pleaded and shown any significant circumstance on his part that may diminish the risk of flight, in light of his documented history of escaping from custody.

In *Sy v. Sandiganbayan*, the Supreme Court considered the following circumstances that diminish the risk of flight of an accused:

[x x x], Sy’s pivotal roles as Chairman of FNI, as Committee Chairman for Mining of the Philippine Chamber of Commerce and Industry, and Vice-Chairman of the Philippine International Chamber of Commerce render his foreign travels necessary for him to effectively execute his corporate duties. In *Cojuangco v. Sandiganbayan*, the Court allowed petitioner therein to travel abroad, noting that the risk of flight is diminished by his recent reinstatement as Chairman and Chief Executive Officer of San Miguel Corporation, giving him more reason to travel to oversee the operations of the company abroad. In this case, Sy has shown his critical function in the strategic cooperation between FNI and China’s Baiyin Nonferrous Group Co., Ltd. to improve the nickel value chain in the Philippines and has argued that the restriction on his business travels overseas economically threatens the companies he represent[s].

Thus, in view of the premises, the Court is compelled to consider that the probability of flight of accused-movant is great if he is permitted to travel abroad.

In sum, the motion is denied for lack of merit

⁶ See “President Duterte removes Nicanor Faeldon from BuCor.” *Office of the Press Secretary*, 5 September 2019, www.ops.gov.ph/news_releases/president-duterte-removes-nicanor-faeldon-from-bucor/. Accessed 13 September 2022.


⁷ See Francisco, Katerina. “FAST FACTS: Who is outgoing Customs chief Nicanor Faeldon?” *Rappler*, 24 August 2017, www.rappler.com/newsbreak/iq/179889-fast-facts-customs-chief-nicanor-faeldon/. Accessed 13 September 2022 and Reuters Staff. “Philippine fugitive coup leader turns himself in.” *Reuters*, 7 July 2010, www.reuters.com/article/idUSSGE6660FM. Accessed 13 September 2022.

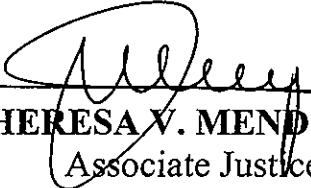
WHEREFORE, the *MOST RESPECTFUL AND VERY URGENT MOTION TO BE ALLOWED VERY BRIEF OVERSEAS BUSINESS TRAVEL/S* dated September 12, 2022 of accused Nicanor E. Faeldon is **DENIED** for lack of merit.

SO ORDERED.


MARYANN E. CORPUS-MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice