



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

QUEZON CITY

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-20-CRM-0012

For violation of Sec. 3(e) of
RA3019

SB-20-CRM-0013

For Malversation of Public
Funds

-versus-

Present:

Fernandez, SJ, J., Chairperson

Vivero, J.

Trespeses, J.

Lagos, J.*

Gomez-Estoesta, J.*

ANTONIO Y. ORTIZ, ET AL.,
Accused.

Promulgated:

08 MAY 2023

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RESOLUTION

For resolution are accused Dennis L. Cunanan's Motion for Leave of Court to Travel dated 14 March 2023¹ and the prosecution's Comment/Opposition [To Accused Dennis L. Cunanan's Motion for Leave of Court to Travel dated 14 March 2023].²

In his motion, accused Cunanan prays that he be allowed to travel from May 7 to 21, 2023 to Indiana, United States of America (USA) to attend the graduation ceremony on May 13, 2023 of his daughter, who is an Actuarial Science and Statistics Major at Purdue University.

*Sitting as Special Members per Administrative Order No. 4-C-2023 dated 2 May 2023.

¹ Record, Vol. 5, pp. 468-491.

² Id. at pp. 492-495.

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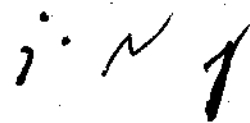
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Accused Cunanan alleges the following:

1. He has not been allowed to travel and visit his daughter since the filing of the PDAF cases sometime in early 2014.
2. His presence in the said ceremony is indispensable and such momentous occasion does not happen so often.
3. His wife currently has a heart condition, making it highly unadvisable for her to travel alone.
4. He is not a flight risk.
 - a. Although he is in fact facing numerous cases before the different divisions of the Sandiganbayan, he has been acquitted in some cases.
 - b. He is currently the President and CEO of a registered corporation in the Philippines. Furthermore, he and his wife are managing some businesses they inherited from his later parents-in-law.
 - c. He is willing to:
 - i. Be escorted by any member of the Philippines National Police (PNP) or any security personnel that may be assigned by the Court for the duration of his travel, at no expense to the government;
 - ii. Report to the Philippine Consulate offices near or within the areas where he will be travelling for proper monitoring of his whereabouts; and
 - iii. Surrender his passport to the Philippine Embassy or the nearest Philippine Consular Office upon port of entry, to be retrieved only immediately before returning to the country, or when so directed by the court to return.
 - d. He may be reachable through his personal mobile number and will be available anytime via only videoconference should the court require his presence in any hearing.

Meanwhile, the prosecution opposes the motion on the following grounds:



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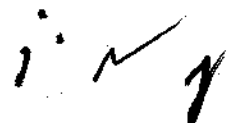
1. The risk of flight of accused Cunanan is high because of the numerous cases against him pending before the different divisions of the Sandiganbayan. Furthermore, accused Cunanan had already been convicted in SB-17-CRM-1496 and 1497, and in SB-17-CRM-0930 and 0940, both entitled *People v. Gregorio T. Ipong, et al.*
2. There is no absolute necessity for the travel, considering that the same is merely for leisure. Cunanan failed to substantiate his allegation that his daughter is among those graduating on the alleged date. Also, the alleged graduation ceremony is a one-day affair, but accused Cunanan will be staying in the USA for a couple of weeks.
3. Mrs. Cunanan's alleged heart condition was not proved. Nevertheless, she may be accompanied by other family members who are equally competent to assist her for the intended travels.
4. Accused Cunanan failed to provide in his motion the following: Philippine Passport, US Visa, confirmed flight/plane tickets, confirmed hotel bookings, contact numbers while abroad, and duly notarized undertaking of accused Cunanan's counsel about when he will leave from and return to the Philippines.

When the motion was heard on March 21, 2023, the prosecution reiterated that accused Cunanan should be considered a flight risk in view of the latter's cases pending before the Sandiganbayan and pending appeal before the Supreme Court. However, it admitted that it has no knowledge or information that accused Cunanan had previously absconded, jumped bail, or legally tried to remove himself from the court's jurisdiction.

OUR RULING

After careful evaluation of the arguments raised by the parties and the documents submitted by accused Cunanan, we resolve to **deny** accused Cunanan's motion for lack of merit.

Upon posting bail, the accused subjects himself to the jurisdiction of the court and may validly be restricted in his movement and prohibited from leaving this jurisdiction. He cannot leave the country without the permission of the court where his case is pending. It is to be noted that the grant of bail merely secures provisional or temporary liberty under conditions set by the court. The court may recall said grant and return the accused to detention should he violate the conditions for his temporary liberty or when reasons for



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the lifting of his bail arise. The rule is that “a person facing a criminal indictment and provisionally released on bail does not have an unrestricted right to travel, the reason being that a person's right to travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice.”³

In the instant case, we rule that, as argued by the prosecution, accused Cunanan's cases which are pending before the Sandiganbayan, as well as his convictions⁴ which are pending appeal before the Supreme Court, gives him the motivation to escape and no longer return to the Philippines. Thus, there is a strong possibility that accused Cunanan's travel abroad may be a ruse to abscond from his criminal conviction and prosecution in the country.

This is consistent with the Supreme Court ruling which upheld the Sandiganbayan's denial of an accused's request to travel abroad for medical treatment, in part due to accused's conviction in other cases, as a matter of the Sandiganbayan's sound discretion:

xxx (H)er later conviction in two cases dictated the need for greater caution. To be sure, the conviction is not yet final in view of a motion for reconsideration filed by petitioner. But a person's right to travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice. In such cases, whether the accused should be permitted to leave the jurisdiction for humanitarian reasons is a matter of the court's sound discretion.⁵

On the other hand, we find that accused Cunanan has not presented any urgent necessity to support his bid to be allowed to leave the country and travel to the United States.

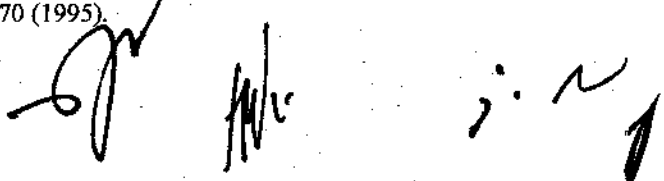
First, accused Cunanan's proposed travel is not of urgent necessity. While his daughter's graduation might be a rare and momentous occasion, it certainly does not require Cunanan's physical presence to take place.

Second, neither is the inadvisability of Cunanan's wife travelling alone due to a heart condition sufficient to warrant the grant of Cunanan's motion. As noted by the prosecution, this alleged heart condition, though identified as Postural Orthostatic Tachycardia Syndrome (POTS), was not substantiated at all. Assuming that the heart condition of Cunanan's wife exists and requires her to have a travel companion, there is no showing that only Cunanan may be competent to assist her. She may be accompanied by equally competent family members who can assist her during her travel.

³ *Garcia v. Sandiganbayan*, G.R. Nos. 205904-06, 17 October 2018.

⁴ Accused Cunanan was convicted in SB-17-CRM-1496 to 1497 and in SB-17-CRM-0939 to 0940, both cases entitled *People of the Philippines v. Gregorio T. Ipong, et al.*

⁵ *Marcos v. Sandiganbayan*, 317 Phil. 149-170 (1995).



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Third, as correctly observed by the prosecution, the proposed reason for travel – the graduation of Cunanan’s daughter – is but a one-day affair. In contrast, Cunanan’s plan is to stay out of the country for a couple of weeks. This protracted stay increases the probability of flight and does not inspire confidence in his resolve to return to the country.

Fourth, being a CEO of a registered corporation of the Philippines, managing some businesses with his wife and having been acquitted in some cases do not negate the fact that accused Cunanan had already been convicted in SB-17-CRM-1496 and 1497, and in SB-17-CRM-0930 and 0940, both entitled *People v. Gregorio T. Ipong, et al.* As discussed earlier, such convictions by Cunanan, though not yet final, make him a flight risk and necessitates that the court take greater caution in determining whether he should be allowed to travel in order to safeguard the system of justice.

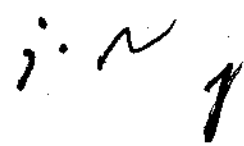
Fifth, we find *non-sequitur* accused Cunanan’s argument that he is not a flight risk because he is now facing the charges against him even when he had the opportunity to flee the country and “was in fact out of the country before the PDAF issues started.” Going in and out of the country while criminal cases have yet to be filed against him does not prove lack of risk of flight because there was then nothing to flee from.

Moreover, the court fails to see the relevance of Cunanan’s citation of the Supreme Court’s ruling in *Cojuangco v. Sandiganbayan*⁶ when it is not on all fours with the instant case. In lifting the Sandiganbayan’s ban on Cojuangco’s travel abroad, the Supreme Court in *Cojuangco*, among other factors, took note of the Office of the Solicitor General’s lack of objection to petitioner Cojuangco’s motion to travel abroad because petitioner has always returned to the Philippines and complied with the restrictions imposed on him in all his previous requests to travel abroad. In contrast, the prosecution herein has made clear its adamant and meritorious objection to Cunanan’s motion.

Sixth, accused Cunanan’s willingness to be escorted by a member of the PNP during the duration of the travel or to make reportorial arrangements with the nearest Philippine Consulate offices, including the surrender of his passport, are not effective measures that can counter the possibility of flight. Evidently, his activities cannot be monitored 24/7 by either the PNP escort or the consular officials. If granted leave to travel abroad, accused Cunanan will still be travelling freely and this will open a window of opportunity for him to leave the jurisdiction from where his criminal cases still thrive.

Seventh, assurances from Cunanan that he will be reachable through his personal mobile number, and that he will be available anytime via only videoconference should the court require his presence in any hearing are vastly inadequate to allay the doubt which the court entertains about his risk

⁶ 360 Phil. 559-600 (1998).



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of flight. Obviously, a personal mobile number is so very easily changed and discarded.

Finally, as observed by the prosecution, accused Cunanan's motion failed to attach various salient documents, such as Cunanan's Philippine Passport, US Visa, confirmed flight/plane tickets, confirmed hotel bookings, contact numbers while abroad, and duly notarized undertaking of accused Cunanan's counsel. Such omissions heighten the court's impression that accused Cunanan is not being forthright and transparent about his intended travel.

Additionally, the court observes with dismay that Cunanan failed to disclose his previous convictions, notwithstanding its relevance in determining the merit of his motion. While the court notes that he has been acquitted in some cases, the fact remains that accused Cunanan has been convicted in some cases, though pending appeal with the Supreme Court. His non-disclosure of his convictions in some cases severely taints accused Cunanan's candor before the court.

Thus, based on all the foregoing, the court is constrained to deny Cunanan's motion for leave to travel abroad.

WHEREFORE, accused Dennis L. Cunanan's "Motion for Leave of Court to Travel" dated 14 March 2023 is **DENIED** for lack of merit.

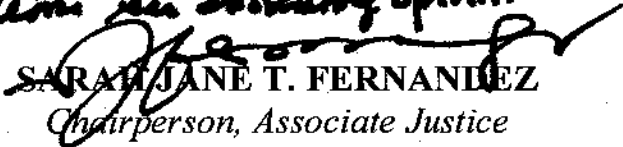
SO ORDERED.

Quezon City, Philippines.


ZALBY V. TRESPESSES
Associate Justice

WE CONCUR:

*I respectfully dissent.
Please see dissenting opinion.*


SARAH JANE T. FERNANDEZ
Chairperson, Associate Justice

[Handwritten initials]

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*Respectfully, I join the dissent of
Justice Carlos Jose T. Fernandez
Kevin Narce B. Vivero*

KEVIN NARCE B. VIVERO

Associate Justice


RAFAEL R. LAGOS

Associate Justice


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice

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DISSENTING OPINION

I dissent from the *ponencia* of Hon. Zaldy V. Trespeses. I respectfully submit that accused Cunanan should be allowed to travel to Indiana, United States of America (USA) to attend a significant event, the graduation ceremony of his daughter, on May 13, 2023, subject to the usual terms and conditions imposed by the Court.

In *Sy v. Sandiganbayan (Third Division)*,¹ the Supreme Court explained that the constitutional right to travel is part of liberty, which a citizen cannot be deprived of without due process of law. However, such right is not absolute. Courts may prohibit a person admitted to bail from leaving the Philippines, and whether the accused may be allowed to leave the jurisdiction is a matter addressed to the court's sound discretion. In the said case, it was further held that an accused requesting permission to travel abroad has the burden to show the need for the travel, but such permission must not be unduly withheld if it is sufficiently shown that allowing the travel would not deprive the court of its exercise of jurisdiction over the person of the accused. The Supreme Court added that courts should always be mindful that an accused is afforded the constitutional presumption of innocence, and hence, entitled to the entire gamut of the accused's rights, subject only to reasonable restrictions that are based on concrete facts, and not mere speculation. The pertinent portions of the Supreme Court's Decision read:

The constitutional right to travel is part of liberty, which a citizen cannot be deprived of without due process of law. However, this right is not absolute, as it is subject to constitutional, statutory, and inherent limitations. One of the inherent limitations is the power of courts to prohibit persons charged with a crime from leaving the country. In one case, the Court held that the court's power to prohibit a person admitted to bail from leaving the Philippines is a necessary consequence of the nature and function of a bail bond. As a result, a person with a pending criminal case and provisionally released on bail does not have an unrestricted right to travel.

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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 [or her] innocence and the exercise of his [or her] fundamental**

¹ G.R. No. 237703, October 3, 2018



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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 [or she] be eventually found liable for the crime charged.

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While an accused requesting for permission to travel abroad has the burden to show the need for his [or her] travel, such permission must not be unduly withheld if it is sufficiently shown that allowing his [or her] travel would not deprive the court of its exercise of jurisdiction over [the accused's] person, as in this case. 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 [or her] 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 [or her] rights, subject only to reasonable restrictions that are based on concrete facts, and not mere speculation.

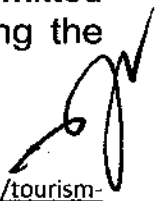
Here, accused Cunanan has shown that his intended travel is necessary. As he averred in his Motion, he had not been allowed to travel and visit his daughters since the filing of the PDAF cases. The graduation ceremony of his daughter, Almira Maria, is a momentous occasion, and allowing him to travel will give him an opportunity to visit her, after not being able to do so for years.

Accused Cunanan's proposed travel itinerary is included in his Motion.² During the hearing on March 21, 2023, the Court required accused Cunanan to submit copies of his passport, his visa, and the notarized undertaking of his counsel.³ In compliance with such requirements, accused Cunanan filed his *Manifestation of Compliance* on March 28, 2023. Attached to the said *Manifestation* are copies of his passport, his B1/B2 Visa,⁴ and the notarized *Affidavit of Undertaking* of Atty. Iryl B. Boco. Accused Cunanan has not submitted confirmed airline tickets and hotel bookings. However, during the

² Motion for Leave of Court to Travel dated March 14, 2023, p. 5

³ TSN, March 21, 2023, pp. 20-21

⁴ Visitor visa for business and tourism (<https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html>; accessed on May 5, 2023)



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hearing on March 21, 2023, the Court noted that accused Cunanan's previous Motions to Travel were denied, and that the said confirmed airline tickets and hotel bookings will be required in the event his instant Motion is granted, considering that the same will translate to some cost on the part of accused Cunanan.⁵

The prosecution has not shown basis for considering accused Cunanan a flight risk. Indeed, there are several cases against him pending before the different Divisions of the Sandiganbayan, as well as convictions pending appeal before the Supreme Court. However, the mere fact that an accused is facing several charges, or even convictions which are not yet final and executory, will not necessarily make such accused a flight risk. The Supreme Court, before which some cases against accused Cunanan are pending appeal, has previously allowed him to travel abroad.⁶ In the said case, the Supreme Court was not unaware of the pending cases before the Sandiganbayan involving accused Cunanan.⁷ Similarly, the Supreme Court, in another case pending appeal before it,⁸ allowed therein petitioner Jesusito D. Legaspi to travel abroad on several occasions.⁹

During the hearing on March 21, 2023, the prosecution manifested that aside from the cases against accused Cunanan pending before the Sandiganbayan and those pending appeal before the Supreme Court, it has no other basis for claiming that accused Cunanan should be considered a flight risk. Moreover, it has no knowledge or information that accused Cunanan has previously absconded, jumped bail, or illegally tried to remove himself from the Court's jurisdiction.¹⁰

Not allowing accused Cunanan to travel abroad when there is no sufficient basis to conclude that he is a flight risk will unduly deprive him of his right to travel. Thus, I respectfully submit that his Motion

⁵ TSN, March 21, 2023, p. 20

⁶ Record, Vol. 3, pp. 259-262, 272-273; Supreme Court Resolution dated June 27, 2022 in G.R. Nos. 254350 and 254444 (<https://sc.judiciary.gov.ph/wp-content/uploads/2022/12/254350.pdf>; accessed on May 5, 2023)

⁷ Please see Note 14 of the Supreme Court's Resolution dated June 27, 2022 in G.R. No. 254350 (*Gregorio Tocmo Ipong v. People of the Philippines*); G.R. No. 254444 (*Dennis L. Cunanan v. People of the Philippines*)

⁸ G.R. No. 220500 (*Cristina Amposta-Mortel v. People of the Philippines*); G.R. No. 220504 (*Theron Victor V. Lacson v. People of the Philippines*); G.R. No. 220505 (*Leo V. Padilla v. People of the Philippines*); G.R. No. 220552 (*Daniel T. Dayan v. People of the Philippines*); G.R. No. 220568 (*Frisco F. San Juan v. People of the Philippines*); G.R. No. 220580 (*Elpidio G. Damaso v. People of the Philippines*); G.R. No. 220587 (*Jesusito D. Legaspi v. People of the Philippines*); and G.R. No. 220592 (*Carmelita Chan v. People of the Philippines*)

⁹ Please see the Supreme Court's Resolution dated March 8, 2023; (<https://sc.judiciary.gov.ph/wp-content/uploads/2023/04/220500.pdf>; accessed on May 5, 2023)

¹⁰ TSN, March 21, 2023, pp. 8-9

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should be granted, and he should be allowed to travel abroad, albeit with a shortened travel period, and subject to the following conditions:

- 1) Accused Dennis L. Cunanan shall leave the Philippines for the USA not earlier than May 10, 2023 and shall arrive in the Philippines not later than May 17, 2023;
- 2) His itinerary of travel shall cover only Chicago, Illinois, as the entry point, and Indiana, both in the USA, and no other place;
- 3) He shall post a travel bond in the amount of **Five Hundred Eighty Thousand Pesos (P580,000.00)**¹¹ in cash to guarantee his faithful compliance with the terms and conditions imposed herein;
- 4) Within five (5) days from his arrival, he shall personally appear before the Division Clerk of Court, and present his passport and photocopies of the pages thereof indicating the stamp of his departure from, and entry into or arrival in the Philippines, the photocopies to be authenticated by the Division Clerk of Court after a comparison with the original thereof;
- 5) Within fifteen (15) days from his expected date of return, he shall submit to this Court a written formal compliance with the terms and conditions of this resolution;
- 6) If, for whatever reason, he is not able to undertake the travel applied for, he shall, within five (5) days from his intended date of return, personally appear before the Division Clerk of Court and present his passport; and, within fifteen (15) days from the intended date of return, submit the appropriate manifestation together with photocopies of the pages of his passport, duly authenticated by the Division Clerk of Court upon comparison with the original, evidencing that they bore no stamp of departure from or entry into the Philippines or other countries during the relevant period;
- 7) Any material misrepresentation made in accused Cunanan's *Motion for Leave of Court to Travel* dated March 14, 2023, his *Manifestation of Compliance*, his *Additional Manifestation*, and his manifestations during the hearing on his motion on March 21, 2023, shall be punished as contempt of this Court and shall be dealt with accordingly;
- 8) Notice of further proceedings hereon, should accused Cunanan not return as undertaken, shall be made to him through his counsel of record, and if he should not present himself at the

¹¹ Double the amount of the original bail recommended in SB-20-CRM-0012 (P90,000.00) and the amount computed using the formula in *People v. Valdez*, G.R. Nos. 216007-09, December 8, 2015 (P200,000.00)

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hearings of the cases despite notice to him and/or his counsel, he shall be deemed to have waived his presence;

- 9) Such waiver shall not preclude this Court from forfeiting his travel bond, and the issuance of a warrant for his arrest for non-compliance with these requirements; and,
- 10) The Resolution granting his Motion will be released only upon presentation by accused Cunanan of his confirmed airplane tickets and confirmed hotel booking.


SARAH JANE T. FERNANDEZ
Associate Justice