G.R. No. 252117 (In the Matter of the Urgent Petition for the Release of Prisoners on Humanitarian Grounds in the Midst of the Covid-19 Pandemic. ***Dionisio S. Almonte, et al., petitioners v. People of the Philippines, et al., respondents*****)**

Promulgated:

July 28, 2020

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SEPARATE OPINION

PERALTA, *C.J.*:

I join the majority in treating the instant petition as petitioners' application for bail or recognizance. I submit this opinion, however, in order to articulate my views on some salient points.

The instant Petition[1] calls for the release of prisoners on humanitarian grounds in the midst of the pandemic created by the 2019 Novel Coronavirus Disease (COVID-19) that now grips the world at the neck.

Petitioners, who deem themselves as political prisoners detained in various penal institutions in the country, profess that they are most vulnerable to COVID-19 as they are either elderly, pregnant, or afflicted with hypertension and/or diabetes. Believing that an outbreak of the disease in their respective places of confinement is not unlikely owing to what they perceive to be hellish conditions in highly-congested local prisons, they fear that they stand to be the most susceptible to infection if and when such outbreak does occur.[2]

In support of this bid, petitioners cite a number of medical reports and abstracts tending to demonstrate that the elderly, sickly and those already afflicted with certain ailments, are the easiest victims of the novel disease.[3] Thus, they plead for their release from confinement either on bail or recognizance, as well as for the creation, by directive of the Court, of a Prisoner Release Committee with accompanying ground rules for the conditional release of similarly situated prisoners.[4] They invoke humanitarian considerations based on international law principles, specifically those embodied in the Revised United Nations Standard Minimum Rules for the

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1 *Rollo*, pp. 3-62.
2 *Id.* at 14, 29, 34-36.
3 *Id.* at 37-42.
4 *Id.* at 59.

Treatment of Prisoners (*The Mandela Rule of 2015*) and Article 9.1 of the International Covenant on Civil and Political Rights (*ICCPR*).[5]

By way of Comment,[6] the Office of the Solicitor General (*OSG*) advocates for the dismissal of the petition based on outright violation of judicial hierarchy. It explains that the plea should be offered before the courts where petitioners' respective cases are being heard, and not directly with the High Court. It also calls attention to the fact that petitioners have all been charged and, except for one[7] who has already met conviction and is currently serving sentence, are under prosecution for non-bailable offenses in relation to their alleged membership in the CPP-NPA-NDF. More than half of them are in custody at Camp Bagong Diwa, Taguig City and none of them has yet been reported to exhibit signs of infection.

As said, the Petition must be treated as petitioners' application for bail or recognizance.

I

The release of petitioners on bail is restricted by twin fundamental provisions of the Constitution and the Rules of Court. Section 7 of Rule 114 of the Rules of Court instructs that a person charged with a capital offense or with an offense punishable by *reclusion perpetua* or life imprisonment shall not be entitled to bail when the evidence of guilt is strong.[8] The rule echoes from Section 13, Article III of the Constitution which stresses that bail, while ordinarily a right of an accused, is not available to those charged of a capital offense or an offense punishable by life imprisonment or *reclusion perpetua* when the evidence of guilt is strong.[9]

Here, petitioners are all charged with crimes or offenses that are punishable by death, life imprisonment or *reclusion perpetua*. Worse, one of them was already convicted by the trial court. Hence, none of the petitioners can claim to be entitled to bail as a matter of right. Their entitlement to bail is a matter reposed to judicial discretion—particularly, to the discretion of the court where their cases are pending.

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5 *Id.* at 42-48.

6 *Id.* at 224-266.

7 *Id.* at 232.

8 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* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.

9 Sec. 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 be 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.

The question of whether petitioners are deserving of provisional liberty, much more of whether the evidence of guilt against them are strong, are certainly questions of fact. Resolving such questions in the first instance is not, and has never been, the province of this Court. It is not difficult to see the merit in the OSG's argument, therefore, that the instant petition suffers from infirmity—for the same not only ignores the doctrine of hierarchy of courts—but also implores this Court to act on a matter that lies outside its competence as it is not ordinarily legally equipped to evaluate evidence respecting the right to bail.

Indeed, judicial discretion in granting bail may be exercised only after pertinent evidence is submitted to a court during a bail hearing after due notice to the prosecution.[10] The necessity, if not indispensability, of a bail hearing under the circumstances is all the more revealed if we consider that certain factors in the fixing of a bail bond—such as the nature and circumstances of the crime, character and reputation of the accused, the weight of the evidence against him, the probability of the accused appearing at the trial, whether or not the accused is a fugitive from justice, and whether or not the accused is under bond in other cases—unequivocally require the presentation of evidence and a reasonable opportunity for the prosecution to refute it.[11]

Yet, petitioners argue that it would be unreasonable to require them to follow the usual procedure in applying for bail given the threat of the COVID-19 pandemic and the fact that the whole Luzon has been placed under enhanced community quarantine.

The argument fails to convince.

We remind petitioners that neither the pandemic nor the executive declaration of a Luzon-wide lockdown has the effect of suspending our laws and rules, much less of shutting down the Judiciary.

Contrary to petitioners' insinuation, applying for bail before trial courts has not been rendered infeasible even amidst the COVID-19 pandemic and the Luzon-wide lockdown. In Administrative Circular (*AC*) No. 31-2020, issued on March 16, 2020, this Court explicitly assured that court hearings on urgent matters—including that of "*petitions, motions or pleadings related to bail*"—will continue during the entire period of the community quarantine.

In addition, the Court has issued several circulars specifically aimed at facilitating and expediting the release of certain persons deprived of liberty (*PDL*) at the height of the present COVID-19 pandemic. Thus:

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10 *People v. Presiding Judge of the RTC of Muntinlupa City*, 475 Phil. 234, 244 (2004).

11 See *People v. Judge Dacudao*, 252 Phil. 507, 513 (1989).

1.) In AC No. 33-2020,[12] the Court specifically allowed the electronic filing of applications for bail and granted trial court judges a wider latitude of discretion for a lowered bail amount effective during the period of the present public health emergency. The Circular also sanctioned the electronic transmission of bail application approvals and directed the consequent release order to be issued within the same day to the proper law enforcement authority or detention facility to enable the release of the accused.

2.) In AC No. 34-2020,[13] on the other hand, the Court expanded the efficacy of electronic filing of criminal complaints and informations, together with bail applications, to keep up with the executive determination of the need to extend the period of the enhanced community quarantine in critical regions of the country.

3.) In AC No. 37-2020,[14] the Court ordered the pilot-testing of videoconference hearings on urgent matters in criminal cases, including bail applications, in critical regions where the risk of viral transmission is high.

4.) Finally, in AC No. 38-2020,[15] the Court authorized the grant of reduced bail and recognizance to indigent PDLs pending the continuation of the proceedings and the resolution of their cases.

These issuances, accompanied by pertinent circulars[16] emanating from the Office of the Court Administrator (*OCA*), had, in fact, facilitated the gradual and incremental release of 33,790 detention prisoners from March 17 to June 22, 2020 as follows:[17]

Period	**Number of PDLs Released Nationwide**
March 17 to April 29	9,731
April 30 to May 8	4,683
May 9 to May 15	3,941
May 16 to May 22	4,167

12 Dated March 31, 2020.
13 Dated April 8, 2020.
14 Dated April 27, 2020.
15 Dated April 30, 2020.
16 Namely, OCA Circular Nos. 89-2020, 91-2020, 93-2020, 94-2020, 96-2020, 98-2020.
17 Figures from the Office of the Court Administrator.

May 23 to May 29	2,927
May 30 to June 5	2,149
June 6 to June 11	2,924
June 12 to June 22	3,268
Total PDLs released from March 17 to June 22, 2020	**33,790**

II

An examination of the substance of the instant Petition would further reveal its inaptness.

Invoking equity considerations, petitioners allude to the doctrines in *Enrile v. Sandiganbayan, et al.*[18] and *De la Rama v. The People's Court*[19] where the accused were allowed temporary liberty on account of proven medical condition as their continued incarceration was shown to be further injurious to their health and would endanger their lives.[20] The OSG, on the other hand, rebuffs this allusion by positing that *Enrile* cannot be relied upon as a precedent because it is a *pro hac vice* ruling.

While I believe that petitioners' invocation of *Enrile* is misplaced, I take exception to the OSG's characterization of the ruling in that case as *pro hac vice*.

Pro hac vice is a Latin term meaning "*for this one particular occasion.*"[21] Similarly, a *pro hac vice* ruling is one "***expressly qualified as x x x cannot be relied upon as a precedent to govern other cases.***"[22] The Court never expressly qualified the *Enrile* ruling as having only a *pro hac vice* application. In fact, the Court, even if it minded to, could not have validly made such qualification, considering that the promulgation of *pro hac vice* decisions has already been declared as illegal in our jurisdiction. In the 2017 *en banc* case of *Knights of Rizal v. DMCI Homes, Inc.*,[23] we held:

> *Pro hac vice* means a specific decision does not constitute a precedent because the decision is for the specific case only, not to be followed in other cases. **A *pro hac vice* decision violates statutory law - Article 8 of the Civil Code - which states that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."** The decision of the Court in this case cannot be *pro hac* vice because by mandate of the law every decision of the Court

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18 767 Phil. 147 (2015).
19 77 Phil. 461 (1946).
20 *Rollo*, pp. 55-57.
21 *Partido ng Manggagawa (PM) v. COMELEC*, 519 Phil. 644, 671 (2006).
22 *Id.* (Emphasis ours)
23 G.R. No. 213948, April 18, 2017.

> forms part of the legal system of the Philippines. **If another case comes up with the same facts as the present case, that case must be decided in the same way as this case to comply with the constitutional mandate of equal protection of the law. Thus, a *pro hac vice* decision also violates the equal protection clause of the Constitution.** (Emphasis supplied)

Petitioners err in their invocation of *Enrile* simply because the circumstances in that case are different from the circumstances herein.

First, the petitioner in *Enrile*—the Senator Juan Ponce Enrile—underwent bail hearing with the *Sandiganbayan* prior to his resort to this Court. What Senator Enrile assailed before this Court then was the Sandiganbayan's denial of his *Motion to Fix Bail* and its *Motion for Reconsideration*. In the instant case, however, petitioners are asking the Court to grant their provisional liberty by way of bail or recognizance without filing a motion before the trial courts having jurisdiction over their respective cases.

Second, in his bail hearing for the *Sandiganbayan*, Senator Enrile was able to present evidence of his current fragile state of health. Based on that, the Court was able to infer that Senator Enrile's advanced age and ill health required special medical attention. On the other hand, to prove their medical conditions, petitioners herein attached medical certificates and other documents in their petition. However, the Court cannot simply take judicial notice of petitioners' age and health conditions. Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them; it is the duty of the court to assume something as matters of fact without need of further evidentiary support.[24] Age and health conditions necessitate the presentation of evidence. This further emphasizes the need to conduct a bail hearing.

Lastly, Senator Enrile's medical condition was not the only consideration why he was afforded the benefit of bail. In *Enrile*, the Court affirmed the right to bail because Senator Enrile was likewise not shown to be a danger to the community and his risk of flight was nil – a conclusion that was impelled not only by his social and political standing, but also by his voluntary surrender to the authorities. Thus –

> In our view, his social and political standing and his having immediately surrendered to the authorities upon his being charged in court indicate that the risk of his flight or escape from this jurisdiction is highly unlikely. His personal disposition from the onset of his indictment for plunder, formal or otherwise, has demonstrated his utter respect for the legal processes of this country. We also do not ignore that at an earlier time many years ago when he had been charged with rebellion with murder and multiple frustrated murder, he already evinced a similar personal disposition of respect for the legal processes, and was granted bail during the pendency of his trial

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24 *CLT Realty Development Corp. v. Hi-Grade Feeds Corp., et al.*, 768 Phil. 149, 163 (2015).

> because he was not seen as a flight risk. With his solid reputation in both his public and his private lives, his long years of public service, and history's judgment of him being at stake, he should be granted bail.[25] (Citations omitted)

The Court is mindful that a contagion within the country's penal institutions is neither unlikely nor impossible. Yet, we take judicial notice of the fact that following the executive declaration of a public health emergency in March, the Bureau of Jail Management and Penology (*BJMP*) and the Bureau of Corrections, under a joint mandate to protect the health and safety of all PDLs and detention prisoners, have implemented preventive and precautionary measures against a potential COVID-19 outbreak in detention and correctional facilities. The measures include the total lockdown of penal institutions, the designation of isolation facilities within premises, the procurement of personal protective equipment, as well as nutrition and on-site education campaigns. Only recently, the Bureau of Corrections has also put in place necessary infrastructure to provide inmates facility for online visits/video conference with their relatives.

Be that as it may, petitioners would now have the Court follow the global trend of late, whereby various governments have taken swift unprecedented measures in decongesting prison facilities by allowing an exodus of prisoners on conditional or temporary liberty to mitigate the effects of an on-site community transmission of COVID-19 or otherwise curb that possibility. It bears to stress, however, that these initiatives were based on laws and rules prevailing in those jurisdictions. For instance, the directive for the release of prisoners in the territories of India applies only to those convicted or charged with offenses punishable with less than seven years of jail term.[26]

At any rate, the Philippines did not lag behind in this respect. As I have already pointed out, this Court – mindful of the circumstantial vulnerabilities present in detention and correctional facilities across the country, as well as of the limits of its own power and competence – has already caused, through its various issuances in response to the pandemic, the seamless release of 33,790[27] detention prisoners in a most expeditious way but in line with existing fundamental laws, rules and legal processes. Such issuances, in turn, complement on-going efforts by executive agencies to expedite the release of PDLs *via* parole, pardon and executive clemency. Indeed, the latest figures from the Department of Justice indicate that, as a direct result of implementing its *Interim Rules on Parole and Executive Clemency*[28] which took effect last May 15, 2020, the Board of Pardons and Parole (*BPP*) was already able to grant parole to 221 PDLs, recommend the release on conditional pardon of 56

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25 *Enrile v. Sandiganbayan, et al.*, *supra* note 18, at 173.

26 https://www.humanrightsinitiative.org/content/stateut-wise-prisons-response-to-covid-19-pandemic-in-india. Last visited May 27, 2020.

27 Figure as of June 22, 2020. *See* note 17.

28 BPP Resolution No. OT-04-05-2020.

others, and endorse the commutation of sentence of 56 more from May 18, 2020 to June 10, 2020—a period of only less than a month.[29] These, in addition to the earlier reported release by the BJMP of some 4,188 PDLs from March 17 to April 30, 2020.[30] Undeniably, such parallel efforts by the Judiciary and executive show the government's commitment in maximizing, nay, in exhausting, every available legal means in order to decongest the country's detention and correction facilities amidst the current national health crisis.

III

At this juncture, we stress that unless there is clear showing that petitioners are actually suffering from a medical condition that requires immediate and specialized attention outside of their current confinement – as, for instance, an actual and proven exposure to or infection with the novel coronavirus – they must remain in custody and isolation incidental to the crimes with which they were charged, or for which they are being tried or serving sentence. Only then can there be an actual controversy and a proper invocation of humanitarian and equity considerations that is ripe for this Court to determine.

We come to the conclusion that petitioners are probably seeking administrative – not judicial – remedies that would genuinely address their concerns in regard to which this Court, as overseer of the Judiciary, could exercise no other prerogative than to: (a) treat the instant petition as petitioners' application for bail or recognizance, (b) refer the same to the respective trial courts where their criminal cases are pending for resolution and (c) direct said courts to resolve such incidents with deliberate dispatch. That judicial remedy is unavailable to the reliefs prayed for, is all the more apparent from their collective sentiment that the government-imposed quarantine and lockdown measures, which in the interim necessarily denied them of supervised access to their families and friends, have negatively affected their mental well-being. As they hereby complain about languishing in isolation, they fail to see that in truth, the rest of the outside world is likewise socially isolating as a basic precautionary measure in response to a pandemic of this kind. They lament the lingering fear of a potential infection within their confinement on account of their respective physical vulnerabilities and hereby plead that they be indefinitely set free, without realizing it is that same exact fear which looms outside of prison walls.

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29 Letter of Secretary Menardo Guevarra to the Chief Justice dated June 15, 2020.

30 https://tribune.net.ph/index.php/2020/05/12/4188-prisoners-freed-to-decongest-jails/. Last visited on May 31, 2020.

WHEREFORE, I vote to: (a) **TREAT** the instant petition as petitioners' application for bail or recognizance, (b) **REFER** the same to the respective trial courts where their criminal cases are pending for resolution, and (c) **DIRECT** said courts to resolve such incidents with deliberate dispatch.

DIOSDADO M. PERALTA
Chief Justice