

EN BANC

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, versus, PEOPLE OF THE PHILIPPINES, et al., respondents.

Promulgated:

July 28, 2020

X-----X

CONCURRING OPINION

LOPEZ, J.:

On April 6, 2020, several Persons Deprived of Liberty¹ (PDLs) filed a petition² before this Court seeking their provisional freedom for the duration of the Covid-19³ pandemic through recognizance or bail. The PDLs alleged that they belong to the “*vulnerable or at-risk groups*” because of their medical and/or physical conditions.⁴ Also, the PDLs asked for *ipso facto* release from detention on humanitarian and equitable grounds considering the threats of the present public health emergency. Essentially, they prayed for the following reliefs:

- 1) DIRECTING the temporary RELEASE ON RECOGNIZANCE of petitioners, including those similarly situated who are listed herein but were not able to subscribe on this Petition due to the lockdown, for humanitarian consideration, for the duration of the state of public health emergency, national calamity, lockdown and community quarantine due to the threats of the COVID 19;
- 2) In the alternative, DIRECTING the RELEASE ON BAIL of herein petitioners, including those similarly situated who are listed and referred to in this Petition, the amounts of which shall be set at the discretion of this Honorable Court;

¹ Person Deprived of Liberty (PDL) — refers to a detainee, inmate, or prisoner, or other person under confinement or custody in any other manner. However, in order to prevent labeling, branding or shaming by the use of these or other derogatory words, the term “prisoner” has been replaced by this new and neutral phrase “person deprived of liberty” under Article 10, of International Covenant on Civil and Political Rights (ICCPR), who “shall be treated with humanity and with respect for the inherent dignity of the human person.” (Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 10575, IRR of RA 10575, [May 23, 2016]).

² Petition, pp. 1-62.

³ Coronavirus disease.

⁴ There are 22 petitioners in this case. *13 are detained at Metro Manila District Jail (MMDJ) 4, Camp Bagong Diwa, Taguig City, namely: Almonte, Atadero, Jr., Bacarra, A. Birondo, Casambre, Castillo, Fernandez, Jr., Gamara, Laddad, Legaspi, Silva, A. Villamor, and Rosales; *4 are detained at Taguig City Jail Female Dorm, namely, W. Birondo, V. Villamor, Lagtapon, and Pérez (21 years old, leprosy); *4 are detained at Manila City Jail, namely, Murillo, Nasino (22 years old, pregnant), Tomada, and Belleza; and *1 Petitioner is serving sentence at Correctional Institution for Women (CIW), Mandaluyong City, namely, Bucatcat (73 years old). All petitioners are detainees whose cases are still on trial, except for Bucatcat, who is a prisoner serving sentence at CIW in Mandaluyong. Moreover, except for Perez, 21 years old, with leprosy and Nasino, 22 years old, 5 months pregnant, all petitioners are in their 60’s and above and most have hypertension, diabetes and/or pulmonary disease.

J

3) MANDATING the creation of a Prisoner Release Committee, similar to those set up in other countries, to urgently study and implement the release of all other prisoners in various congested prisons throughout the country who are similarly vulnerable but cannot be included in this Petition due to the difficult circumstances; and

4) DECLARING the issuance of ground rules relevant to the release of eligible prisoners.⁵

However, it is settled that equity may be availed only in the absence of and never against statutory law or rules of procedure.⁶ In our jurisdiction, there are existing positive rules relevant to the rights of PDLs which remain in force.

The solemn duty of the Court is to apply the law. It is not a trier of facts.

The right to bail is enshrined in the 1987 Constitution.⁷ Section 1, Rule 114 of the Rules of Court defined bail as “*the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court x x x.*” Also, bail is either a matter of right or discretion depending on the penalty, thus:

RULE 114

x x x x

SEC. 4. Bail, a matter of right; exception. — All persons in custody shall be admitted to bail **as a matter of right**, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment.

SEC. 5. Bail, when discretionary. — Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, **admission to bail is discretionary**. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

x x x x

SEC. 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. (Emphases Supplied)

⁵ Petition, p. 57.

⁶ *Philippine Carpet Manufacturing Corporation v. Tagyamon*, 723 Phil. 562 (2013). See also *Lim Tupas v. Court of Appeals*, 271 Phil. 628 (1991); and *Zabat, Jr. v. Court of Appeals*, 226 Phil. 489 (1986).

⁷ See CONSTITUTION, Article III, Section 14 (2).

In this case, the PDLs failed to indicate whether the charges against them are bailable or not. The Solicitor General's comment later disclosed that except for one who is serving sentence, all the PDLs were charged with non-bailable offenses and their cases are pending trial.⁸ The PDLs admitted these facts in their reply.⁹ It is basic that bail cannot be allowed without a prior hearing to a person charged with an offense punishable with *reclusion perpetua* or life imprisonment.¹⁰ As such, bail is a matter of discretion and its grant or denial hinges on the issue of whether the evidence of guilt against the accused is strong. The determination of the requisite evidence can only be reached after due hearing. Thus, a judge must first evaluate the prosecution's evidence.¹¹ A hearing is likewise required for the trial court to consider the factors in fixing the amount of bail.¹² Notably, this Court outlined the duties of a judge in resolving bail applications,¹³ to wit:

1. In all cases, whether bail is a matter of right or of discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation;
2. Where bail is a matter of discretion, conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion;
3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;
4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond; otherwise petition should be denied.

Here, the PDLs raised factual issues about their health conditions which allegedly made them vulnerable to the pandemic. This requires a balancing of interests between the PDLs' presumption of innocence and the duty of the State to ensure that they will be ready to serve the penalty if eventually found guilty.¹⁴ Yet, what the PDLs submitted are unauthenticated medical certificates which cannot be subject of judicial notice.¹⁵ Likewise, it must be ascertained whether the PDLs are flight risk, or capable of committing another crime during their temporary liberty which may affect public order and safety. On this point, it must be emphasized that this Court is not a trier of facts. Thus, the petition should have been filed before the Regional Trial Courts where the PDLs' criminal cases are pending. This is consistent with the rule that the decision on whether to detain or release an accused before and during trial is ultimately an incident of the judicial power to hear and determine the criminal case.¹⁶

⁸ Comment, pp. 3-9.

⁹ Reply, p. 5.

¹⁰ CONSTITUTION, Art. III, Sec. 13; see also RULES OF COURT, Rule 114, Section 7.

¹¹ *Gimeno v. Arcueno, Sr.*, 320 Phil. 463 (1995).

¹² RULES OF COURT, Rule 114, Sec. 9.

¹³ *Gacal v. Infante*, 674 Phil. 324 (2011), citing *Cortes v. Catral*, 344 Phil. 415 (1997).

¹⁴ *Sy v. Sandiganbayan* (Third Division), G.R. No. 237703, October 3, 2018, 882 SCRA 217, 230.

¹⁵ RULES OF COURT, Rule 129, Sec. 2.

¹⁶ *Gutierrez v. People*, G.R. No. 193728 (Notice), April 4, 2018.

Bail on humanitarian grounds is a matter within the sound discretion of the courts.

In *Enrile v. Sandiganbayan*,¹⁷ this Court allowed bail for humanitarian reasons based on the following factors: (1) the principal purpose of bail, which is to guarantee the appearance of the accused at the trial or whenever so required by the court; (2) the Philippines' responsibility in the international community arising from the national commitment under the *Universal Declaration of Human Rights*, specifically, to uphold the fundamental human rights as well as value the worth and dignity of every person; (3) the petitioner's 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; and (4) the fragile state of petitioner's health, as proven by the testimony of a physician presents another compelling justification for his admission to bail.

The PDLs failed to present similar circumstances. The filing of petitions for bail before the trial courts where the criminal cases are pending is a remedy that has always been available. However, the PDLs opted not to avail of such process insisting that this will not provide an adequate and speedy relief to escape the ravaging effects of the pandemic. I see no reason for this apprehension. Foremost, the trial courts conduct only a summary hearing in bail applications.¹⁸ Also, there are ample safeguards under the *Revised Guidelines for Continuous Trial of Criminal Cases* against any delay in the proceedings. Specifically, petitions for bail shall be set for summary hearing after arraignment and pre-trial and shall be resolved by the trial court within a non-extendible period of 30 calendar days from date of the first hearing, without need of oral argument and submission of memoranda.¹⁹ Lastly, the *Guidelines for Decongesting Holding Jails by Enforcing the Rights of Accused Persons to Bail and to Speedy Trial* provides that a motion to reduce bail shall enjoy priority in the hearing of cases.²⁰

Worldwide initiatives to release prisoners amid the pandemic are not absolute.

It is true that several countries have implemented release programs for prisoners to prevent the spread of Covid-19 virus but these initiatives were subject to exceptions. In Afghanistan, the members of Islamist Militant Group are not included. In Indonesia, those released were mostly juvenile offenders and those who already served at least two-thirds of their sentences. In Iran, only low-risk and non-violent offenders serving short sentences are released. In Morocco, the prisoners were selected based on their health, age, conduct, and length of detention and were granted pardon. In United Kingdom, high-risk inmates convicted of violent or sexual offenses, or of national security concern or a danger to children

¹⁷ 767 Phil. 147 (2015).

¹⁸ *Revilla, Jr. v. Sandiganbayan*, G.R. Nos. 218232, 218235, 218266, 218903 & 219162, July 24, 2018.

¹⁹ A.M. No. 15-06-10-SC (Resolution), April 25, 2017.

²⁰ Section 3 of A.M. No. 12-11-2-SC (March 18, 2014) states: "*When amount of bail may be reduced.* — If the accused does not have the financial ability to post the amount of bail that the court initially fixed, he may move for its reduction, submitting for that purpose such documents or affidavits as may warrant the reduction he seeks. **The hearing of this motion shall enjoy priority in the hearing of cases.** (Emphasis Supplied)

were excluded.²¹ It must be stressed that the release of prisoners in other jurisdictions was made upon the orders of their Chief Executives.

Corollarily, the matter of unilaterally ordering the temporary release of the PDLs solely on equitable grounds is, strictly speaking, not purely judicial in character. This Court must abstain from exercising such power lest it encroach on the prerogatives of the President and the Congress. The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in the framing of our Constitution. Each department has exclusive cognizance of matters placed within its jurisdiction and is supreme within its own sphere.²² It is not within the province of the judiciary to express an opinion, or express a suggestion, that would reflect on the wisdom or propriety of the action of the Chief Executive or the Congress on matters purely political in nature. Otherwise, it may be considered as an interference or an attempt to influence the exercise of their powers.²³ Hence, the temporary release of PDLs outside of bail, recognizance and other court processes is best left to the Chief Executive and Congress, especially since matters related to public health and safety are political questions.

PDLs can avail of adequate protections under international and domestic laws.

The overcrowding situation in jail facilities in the Philippines increases the risk of contracting any disease. This means that regardless of age or whether they have pre-existing medical condition, the PDLs are all vulnerable to contracting Covid-19 because of the congestion, along with inadequate nutrition and scarcity in health care. These are problems that need to be sufficiently addressed, not only on account of the pandemic, but more so because these rights are ought to be guaranteed to prisoners both under international and domestic laws.

On this score, the *Universal Declaration of Human Rights* is customarily binding upon the members of the international community. The Philippines has the responsibility of protecting and promoting the right of every person to liberty and due process, ensuring that those detained or arrested can participate in the proceedings before a court, to enable it to decide without delay on the legality of the detention and order their release if justified. The Philippine authorities are under obligation to make available to every person under detention such remedies which safeguard their fundamental right to liberty. These remedies include the right to be admitted to bail.²⁴ Accordingly, this Court extended the application of bail to deportation²⁵ and extradition²⁶ proceedings.

²¹ List: Countries Releasing Prisoners Over Coronavirus Fears. Accessed April 23, 2020 at <https://www.rappler.com/newsbreak/iq/257267-list-countries-release-prisoners-over-coronavirus-fears>.

²² *Echegaray v. Secretary of Justice*, 358 Phil. 410 (1998).

²³ *Director of Prisons v. Ang Cho Kio*, 144 Phil. 439 (1970).

²⁴ In *Government of Hongkong Special Administrative Region v. Olalia, Jr.*, 550 Phil. 63 (2007), this Court ruled that the Philippines, along with the other members of the family of nations, committed to uphold the fundamental human rights as well as value the worth and dignity of every person. This commitment is enshrined in Section 2, Article II of our Constitution which provides: "The State values the dignity of every human person and guarantees full respect for human rights."

²⁵ *Mejoff v. Director of Prisons*, 90 Phil. 70 (1951).

²⁶ *Government of Hongkong Special Administrative Region v. Olalia, Jr.*, *supra*.

Later, the United Nations General Assembly adopted the *United Nations Standard Minimum Rules for the Treatment of Prisoners*²⁷ or the *Nelson Mandela Rules*, which seeks to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.²⁸ It clothed the PDLs with the following rights:

Rule 24

1. **The provision of health care for prisoners is a State responsibility.** Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

Rule 25

1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, **paying particular attention to prisoners with special health-care needs** or with health issues that hamper their rehabilitation.

x x x x

Rule 27

1. **All prisons shall ensure prompt access to medical attention in urgent cases.** Prisoners who **require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.** Where a prison service has its own hospital facilities, **they shall be adequately staffed and equipped to provide prisoners** referred to them with appropriate treatment and care.

x x x x

Rule 30

A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:

x x x x

(d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period;

x x x x

²⁷ General Assembly Resolution 70/175, adopted on December 17, 2015.

²⁸ *Id.*, Preliminary Observation 1.

B. Prisoners with mental disabilities and/or health conditions

Rule 109

1. Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.

2. **If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities** under the supervision of qualified health-care professionals.

x x x x (Emphases supplied.)

The standards for the treatment of prisoners are expressly incorporated in Republic Act No. 10575 or the Bureau of Corrections (BuCor) Act of 2013²⁹ and its implementing rules³⁰ viz.:

[R.A. No. 10575]

SECTION 4. *The Mandates of the Bureau of Corrections.* – The BuCor shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years.

(a) Safekeeping of National Inmates – The safekeeping of inmates shall include decent provision of quarters, food, water and clothing in compliance with established United Nations standards. x x x

x x x x

[Implementing Rules]

RULE II – GENERAL PROVISIONS

x x x x

Section 2. *Declaration of Policy.* – It is the policy of the State to promote the general welfare and safeguard the basic rights of every prisoner incarcerated in our national penitentiary by promoting and ensuring their reformation and social reintegration, **creating an environment conducive to rehabilitation** and compliant with the United Nations Standard Minimum Rules for Treatment of Prisoners (UNSMRTP).

x x x x

ee. Safekeeping – refers to the custodial mandate of the BuCor's present corrections system, and shall refer to the act that ensures the public (including families of inmates and their victims) that national inmates are provided with their basic needs. The **safekeeping of inmates** shall moreover comprise decent provision for their basic needs, **which include habitable quarters, food, water, clothing, and medical care**, in compliance with the established UNSMRTP, and

²⁹ Approved on May 24, 2013.

³⁰ Approved on May 23, 2016.

consistent with restoring the dignity of every inmate and guaranteeing full respect for human rights. The complementary component of Safekeeping in custodial function is Security which ensures that inmates are completely incapacitated from further committing criminal acts, and have been totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary. Security also includes protection against illegal organized armed groups which have the capacity of launching an attack on any prison camp of the national penitentiary to rescue their convicted comrade or to forcibly amass firearms issued to corrections officers.

X X X X

RULE IV – MANDATES OF THE BUREAU OF CORRECTIONS AND TECHNICAL OFFICERS

a) Safekeeping of National Inmates. In compliance with established United Nations Standard Minimum Rules for the Treatment of Prisoners (UNSMRTP), the safekeeping of inmates shall include:

1. **Decent and adequate provision of basic necessities such as shelters/quarters, food, water, clothing, medicine;**
2. Proper observance of prescribed privileges such as regulated communication and visitation; and
3. Efficient processing of necessary documentary requirements and records for their timely release. The processing of these documentary requirements shall be undertaken by the Directorate for Inmate Documents and Records (DIDR).

The core objective of these safekeeping provisions is to “accord the dignity of man” to inmates while serving sentence in accordance with the basis for humane understanding of Presidential Proclamation 551, series 1995, and with UNSMRTP Rule 60. (Emphases Supplied)

The implementing rules is explicit that PDLs who are suffering from contagious diseases should be confined in the hospital or infirmary inside the prison compound. Those needing advanced medical treatment shall be brought to the nearest hospital if the prison’s medical facilities are not adequate to treat the disease:


RULE VII – FACILITIES OF THE BUREAU OF CORRECTIONS

d) Hospital/Infirmary – refers to a medical facility established inside the prison compound for treatment of sick or injured inmates. This will also serve as a place of confinement for inmates with contagious disease. Sick inmates requiring advance medical treatment shall be brought to the nearest hospital if the prison hospital does not have the necessary medical equipment and expertise to treat such malady.

Hospital/Infirmary for Types A and B shall contain, at least, basic facilities such as isolation room, emergency room, operating room, recovery room, dental, laboratory, X-ray room, comfort rooms, beddings, pharmacy and other standard facilities for Hospitals/Infirmaries. This shall be in accordance with the Administrative Order No. 147-s-2004 issued by the Department of Health.


Verily, the trial courts having jurisdiction over the criminal cases and bail applications may refer the PDLs to the Bureau of Jail Management and Penology (BJMP)'s or BuCor's infirmary for purposes of evaluation and treatment. The 2015 BJMP Comprehensive Operations Manual likewise provides that, in cases of emergency wherein it would not be possible to secure the trial court's order granting Temporary Pass, the BJMP is authorized to take an inmate who is seriously ill to the nearest hospital. Thereafter, the Jail Warden shall notify the regional director and the trial court.³¹ All jail personnel must also observe the guidelines in handling inmates with special needs such as mentally ill patients, suicidal inmates, inmates with disability, children in conflict with the law, senior citizen inmates, infirm inmates and pregnant or female inmates with infants.³²

FOR THESE REASONS, I concur in the result that the immediate referral of the petition to the appropriate trial courts handling the PDLs' cases is in order.


MARIO Y. LOPEZ
Associate Justice

³¹ 2015 BJMP Comprehensive Operations Manual, Section 40.
³² 2015 BJMP Comprehensive Operations Manual, Section 34.

CERTIFIED TRUE COPY


ENCARNACION ARCHETA
 Clerk of Court
 Supreme Court