ORIGINAL



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

*En Banc*

**LEILA M. DE LIMA,**

***Petitioner,***

*-versus-*

**HON. JUANITA GUERRERO, in her capacity as presiding judge, Regional Trial Court of Muntinlupa City, Branch 204, PEOPLE OF THE PHILIPPINES, P/DIR. GEN. RONALD M. DELA ROSA in his capacity as Chief of the Philippine National Police, PSUPT PHILIP GIL M. PHILIPPS, in his capacity as Director, Headquarters Support Service, SUPT. ARNEL JAMANDRON APUD, in his capacity as Chief, PNP Custodial Service Unit, and ALL PERSONS ACTING UNDER THEIR CONTROL, SUPERVISION, INSTRUCTION OR DIRECTION IN RELATION TO THE ORDERS THAT MAY BE ISSUED BY THE COURT,**

***Respondents.***

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**G.R. SP No. 229781**

**For Certiorari and Prohibition with Application for Preliminary Injunction, and Urgent Prayer for TRO and Status Quo Ante Order**



# MOTION FOR RECONSIDERATION

Petitioner, **LEILA M. DE LIMA**, by undersigned counsel, most respectfully moves for a reconsideration of the Honorable Court's Decision dated 10 October 2017, and in support thereof respectfully states:

# PREFATORY STATEMENT

This case is a test of the fortitude of our institutions of law against attacks to its foundation—justice as fairness. The idea that no person shall be deprived of life, liberty, or property without due process of law is so fundamental because it is the shield that protects the citizen from an overbearing State, and the wall that guards the separation between law and politics.

While Petitioner has very strong views about the inherent unfairness of the process that has been manipulated to ensure her pre-trial detention for non-bailable charges, she believes that the truth about her case is accurately reflected in the *Decision* of the majority of the Members of the Honorable Court itself and the emphatic dissents of its other members.

Nothing proves the truth of the matter in this case and the injustice that Petitioner has been made to bear more than a straightforward analysis of the *Decision* in this case—what it says and does not say; the internal incoherence of its arguments; the incompatible positions of members of the majority; and the sense of deep frustration and utter disbelief of some of the dissenting justices.

Just as it is important for Petitioner to point out to the Members of the Honorable Court the evident deficit in reasoning in the *Decision*, it is equally important for Petitioner to place on record, for the sake of posterity, her fundamental arguments as to why the criminal prosecution against her should not be allowed to prosper and her liberty be not restrained any further.

Ultimately, the Members of the Honorable Court must realize that this case goes beyond the freedom of a single citizen who has been singled out by the President of the Republic whose attacks against her and what she stands for continue unabated.[1] It is about the quality of our democracy, the value of the Bill of Rights, and the stability of our institutions.

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[1] Attached as **Annex "A"** is a compilation of President Duterte's documented public statements against Senator De Lima from August 16, 2016 to October 13, 2017. (A compilation of statements from the period 11 August up to 28 November 2016 was attached as Annex "A" to the Petitioner's Compliance dated 17 March 2017; and a compilation of such statements for the period starting 15 May 2015 to 06 April 2017 was attached as Annex "A" to Petitioner's Memorandum dated 17 April 2017.)

Filipinos are looking. The world is watching.

# TIMELINESS

1. On 19 October 2017, the undersigned counsel received the Decision promulgated on 10 October 2017 ("Decision").

2. The dispositive portion of the *ponencia* of the assailed Decision provides that:

> WHEREFORE, the instant petition for prohibition and *certiorari* is DISMISSED for lack of merit. The Regional Trial Court of City, Branch 204 is ordered to proceed with dispatch with Criminal Case No. 17-165.

3. Justice Presbitero J. Velasco Jr., in his *Ponencia*, ruled that the Petition should be dismissed based on the following grounds: *First*, the Verification and Certification against Forum Shopping attached in the Petition for Certiorari and Prohibition was defective; *Second*, the Petitioner disregarded the rule on hierarchy of courts; *Third*, the Petition was filed prematurely; *Fourth*, the Petitioner violated the rule against forum shopping; *Fifth*, the Regional Trial Court has jurisdiction over violations of Republic Act No. 9165. And *lastly,* that Judge Guerrero did not abuse her discretion in finding probable cause and issuing a warrant of arrest against the Petitioner.

4. Accordingly, the Petitioner is moving for a reconsideration of the Decision based on the grounds provided below.

# GROUNDS

## I

## THE FAILURE OF A MAJORITY OF THE MEMBERS OF THE HONORABLE COURT THEMSELVES TO AGREE ON THE NATURE

**OF THE ACCUSATION AGAINST PETITIONER IS A MANDATORY GROUND FOR HER IMMEDIATE RELEASE.**

**II**

**RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING THE WARRANT OF ARREST.**

**III**

**THE *SANDIGANBAYAN*, NOT THE REGIONAL TRIAL COURT, HAS JURISDICTION OVER PETITIONER'S CASE.**

**IV**

**THE HONORABLE COURT'S PROCEDURAL OBJECTIONS TO THE PETITION ARE NULLIFIED BY ITS OWN DECISION ON THE MERITS.**

# DISCUSSION

## I. THE FAILURE OF A MAJORITY OF THE MEMBERS OF THE HONORABLE COURT THEMSELVES TO AGREE ON THE NATURE OF THE ACCUSATION AGAINST PETITIONER IS A MANDATORY GROUND FOR HER IMMEDIATE RELEASE.

5. A fundamental criminal due process right of a citizen is the right to be informed of the nature and cause of the accusation against her. The purpose of this right is not difficult to understand: to allow

an accused to know the charges against her, so she may properly defend herself.

6. Petitioner, therefore, finds it a welcome development that the nine (9) Members of the Honorable Court, constituting the majority that has condemned Petitioner to suffer continued pre-trial detention, do not even agree on the nature of the charges against her. This fact speaks volumes about the fundamental unfairness of the continued deprivation of Petitioner's liberty.

7. On a matter as simple and important as the sufficiency of the Information in apprising the Petitioner of the nature of the offense she is facing, only five (5) of the nine (9) justices agree that the crime charged is Illegal Drug Trading (the original accusation of the DOJ), not Conspiracy to Commit Drug Trading (the subsequent accusation of the OSG).

8. In fact, three (3) justices, in their Separate Concurring Opinions, understand the Information as charging the crime of Conspiracy to Commit Drug Trading, an entirely different offense as everyone who has taken up basic criminal law will certainly know.

9. On the other hand, one member of the Honorable Court remains vague about whether the Information charges Illegal Drug Trading or Conspiracy to Commit Drug Trading.

10. Justices Velasco, Bersamin, Martires, Reyes, and Gesmundo voted together to hold Petitioner in continued pre-trial detention for Illegal Drug Trading.[2] Justices De Castro,[3] Tijam,[4] and Peralta[5] categorically stated that the offense charged is Conspiracy to Commit Drug Trading.

11. Justice Del Castillo's[6] position, on the other hand, is somewhat of a puzzle. In the opening paragraph of page 3 of his separate concurring opinion, the Justice states that the crime charged is "conspiring to engage in trading of illegal drugs." A mere four (4) paragraphs later, he declares that the offense was "trading and trafficking of illegal drugs in conspiracy with her co-accused."

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[2] *Decision*, pages 21 to 28.

[3] J. Leonardo-De Castro's *Concurring Opinion*, p. 20

[4] J. Tijam's *Separate Concurring Opinion*, pp. 12 to 13.

[5] J. Peralta's *Separate Opinion*, pp. 24 to 25.

[6] J. Del Castillo's *Separate Concurring Opinion*, pp. 3.

12. Everybody is aware that these charges are fundamentally incompatible. The OSG itself initially admitted such incompatibility in its Comment before the Supreme Court[7]; Petitioner voiced out the inconsistency during the Oral Arguments [8] and again in her Memorandum[9]; and the dissent of Justice Caguioa reminds everyone of such glaring incompatibility.[10]

13. Petitioner, therefore, invites the Honorable Court to look into the Summation of Votes because the distribution of the votes goes into the binding effect of the *Decision* and, consequently, impacts the right of the Petitioner to be immediately released.

14. Bluntly put, in the absence of a majority to sustain the validity of the Information, Petitioner is entitled to an immediate release from pre-trial detention as a matter of right. In *Javellana v. Executive Secretary,*[11] while the insufficiency in the number of votes led to the unfortunate validation of the 1973 Constitution, in this case, a similar insufficiency in the number of votes to sustain the Information ought to lead to a fortunate result—the immediate release of Petitioner.

15. Ordinarily, a majority vote of the Members of the Honorable Court is sufficient to declare legal victory for a party in whose favor the majority voted. In civil cases, for example, the fact that the majority has differing legal views or approaches to a case generally has little impact in the determination of the disposition of the case. A majority of eight (8) justices with separate concurring opinions does not affect the binding nature of the result.

16. *However,* such rule does not apply in criminal cases, and in particular, the case at bar where the allegations are incoherent and contested by the Members of the Honorable Court. If a majority of the Members of the Honorable Court itself cannot agree on the nature of the criminal charges, it can only mean that there is no valid Information to sustain Petitioner's pre-trial detention.

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7 Pars. 65, (p. 27), 155 (p. 62) and 157 (p. 63) of the OSG's Comment dated 3 March 2017.

8 TSN of Oral Arguments Day 1, 14 March 2017, pp. 5 to 13.

9 Pars. 15 to 28 of Petitioner's Memorandum dated 17 April 2017.

10 J. Caguioa's *Dissenting Opinion,* pp. 7 to 14.

11 50 SCRA 31, 141. G.R. No. L-36283, 31 March 1973.

17. *First.* The absence of a majority on the nature of the charges against Petitioner is the clearest possible indicator—coming from the Supreme Court itself—that the accusation "is blatantly a pure invention" and "a fake charge," to borrow from Justice Carpio. This is an institutional admission of the gravest consequence.

18. *Second.* If the members of the majority could not even agree on the nature of the accusation reflected in the Information, such fact is an objective indicator that respondent judge could not possibly have had probable cause to issue the warrant of arrest against Petitioner.

19. If at least three members of the nine justices constituting the majority that voted against Petitioner believe that the charges are for Conspiracy to Commit Drug Trading, then it only follows that they must have concluded that respondent judge issued a warrant of arrest for an entirely different, and wrong, case. To keep Petitioner in continued pre-trial detention is patent abuse of judicial authority.

20. *Third.* If the Members of the Honorable Court diverge on the meaning of the accusation, then we all can agree that Petitioner's constitutional right to know the nature and cause of the accusation against her has been violated.

21. Thus, by the standards of the divided opinion of a majority of the Members of the Honorable Court, they have already foretold the acquittal of the accused. If this is not a justification for Petitioner's release, then perhaps nothing can ever be.

22. For sure, the inherent incompatibility in the positions of the majority of the Members of the Honorable Court is a relevant input because Petitioner is not responsible for it; it reflects the internal conflict even among those who support Petitioner's continued incarceration.

23. If another ridiculous complication were necessary, it is important to point out that the Department of Justice, in its 10 March 2017 *Comment* to the Petitioner's *Motion to Quash* before the respondent judge,[12] manifested before her that they were adopting the position of the OSG that the Information in fact charges the

[12] Pages 23 to 24, Annex "B" of Petitioner's Memorandum dated 17 April 2017.

accused with Conspiracy to Commit Drug Trading under Section 26(b) instead of Trading in Illegal Drugs under Section 5.

24. We, therefore, face a situation where the DOJ originally charged Petitioner with Trading in Illegal Drugs, which charge was later "re-angled" into a Conspiracy to Commit Drug Trading, which in turn is incompatible with the *ponente's* (and four other Members') understanding of the Information, which they believe charges Trading in Illegal Drugs. This is a circus only madmen can enjoy.

25. Given these facts, Petitioner is inclined to agree with Justice Caguioa's forceful warning: "The message is clear and unmistakable: Arrest first; resolve the motion to quash and amend the Information later; then proceed to trial; finally, acquit after ten years or so. It does not matter if the accused is to languish in detention. Never mind the accused's constitutional right to be presumed innocent, to be informed of the nature and cause of the accusation against him and not to be held to answer for a criminal offense without due process of law. Never mind if the Information is void for containing mere conclusions of law, for failing to identify and quantify the specific dangerous drug which is the object or *corpus delicti* of the alleged RA 9165 violation, and for not alleging all the facts needed to establish the elements of the offense charged. Never mind if previously this same Court has ruled that such void Information warrants the acquittal of the accused."[13]

26. If a member of the Honorable Court declares—

> "When the very rights guaranteed to an accused by our Constitution are disregarded and the rules of procedure are accorded precedence—that is abhorrent and preposterous. That is plain and simple injustice."[14]

—then a litigant such as Petitioner, who has complained all throughout these proceedings about the undeniable political persecution and abuse of government power attendant in this case, has reasonable grounds to worry about the Honorable Court itself being the instrument of the injustice she complains of.

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[13] J. Caguioa's *Dissenting Opinion*, p. 58, last paragraph.

[14] *Ibid.*, first paragraph.

## II. RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING THE WARRANT OF ARREST.

27. Article III, Section 1 of the Constitution guarantees that "[n]o person shall be deprived of life, liberty or property without due process of law."

28. The Due Process Clause assumes even greater importance where, as here, the danger exists that a citizen might be subjected to deprivation of liberty because of the non-bailable character of the charge.

29. Petitioner, therefore, finds it inconveniently amusing that, despite all the warning signs, respondent judge nonetheless issued the warrant of arrest against her. It is, therefore, not without a disbelieving sense of wonder that the majority of the Members of the Honorable Court have neglected these warning signs which were fully articulated in the Petition, during the oral arguments, in Petitioner's Memorandum, and in the vigorous dissents of their colleagues.

30. One would think that between the perils posed by the continued pre-trial detention of Petitioner and the presumption of innocence guaranteed by the Constitution, the Honorable Court would tilt the balance in favor of liberty in view of the obvious and consistently articulated red flags. Petitioner need not speak for herself, as these red flags in the actions of the respondent judge have been enumerated in Justice Caguioa's dissent:

> (1) She issued the warrant of arrest against Petitioner despite the patent defects evident on the face of the Information;
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> (2) She made a determination of probable cause for violation of RA 9165 against Petitioner despite the absence of sufficient factual averments in the Information of the specific acts constituting such violation;
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> (3) She disregarded established and hornbook jurisprudence requiring the presence of *corpus delicti* in dangerous drugs cases, thus characterizing her act of issuing a warrant of arrest as gross ignorance of the law;

> (4) She totally ignored or purposely closed her eyes to a plethora of cases which held that Information that aver conclusions of law, and not specific facts, as to the offense allegedly committed, are null and void for being violative of the accused's right to be informed of the nature and cause of the accusation against him;
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> (5) She assumed jurisdiction over the case despite the fact that the Information had not validly charged Petitioner with any offense under RA 9165, it being patent that the only crime the Information could sustain is one exclusively cognizable by the *Sandiganbayan*;
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> (6) She disregarded and violated Petitioner's rights not to be deprived of liberty without due process of law and to be presumed innocent when she purposely did not rule on Petitioner's Motion to Quah before she issued a warrant for her arrest, showing extreme and utter malice and bias against Petitioner;
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> (7) If there was a doubt as to whether the Motion to Quash was to be resolved simultaneously with the determination of probable cause, she should have resolved the doubt in Petitioner's favor which is the general and accepted rule; and since she did not do so, this again showed her bias against Petitioner;
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> (8) She acted without jurisdiction when she took cognizance of the case despite the fatal defect on the face of the Information that it could not have validly charged any violation of RA 9165 against Petitioner and that what is apparent therein is only a possible charge of indict bribery, which is exclusively cognizable by the *Sandiganbayan*; and
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> (9) In finding probable cause against Petitioner for violation of RA 9165 and issuing the warrant of arrest against her despite the nullity of the Information, she disregarded and curtailed Petitioner's right to be informed of the nature and cause of the accusation against her and to be presumed innocent, again showing bias against Petitioner.[15]

31. Instead, majority of the Members of the Honorable Court has found, in each and every instance and at each and every stage, the most casual of justifications to sustain her pre-trial detention and the actuations of respondent judge.

32. With due respect, it is remarkably apparent that the jurisdictional *jiu jitsu,* the benevolent attitude towards the DOJ's and

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[15] *Ibid.*, pp. 40 to 41.

the OSG's prosecutorial misconduct, the interpretation in favor of incarceration, the disregard of long-established precedents, even the generous advice given to the respondent judge as to how to correct the apparent defects in the Information are all incompatible with the most basic standards of justice. A referee cannot play for either side.

33. The majority's decision is unfair because "it unsettles established doctrine, misapplies unrelated canons, and most importantly, fails to render good judgment."[16]

34. As pointed out by Justice Leonen, "[e]ven the issuance of the Warrant of Arrest was unconstitutional. Respondent Regional Trial Court Judge Juanita Guerrero did not conduct the required personal examination of the witnesses and other pieces of evidence against the accused to determine probable cause. She only examined the documents presented by the prosecution. Under the current state of our jurisprudence, this is not enough considering the following: (a) the crime charged was not clear; (b) the prosecution relied on convicted prisoners; and (c) the sworn statements of the convicted prisoners did not appear to harmonize with each other."[17]

35. Thus, "[t]he doubt in the nature of the offense charged in the Information and the nature and the content of the testimonies presented would have put a reasonable judge on notice that it was not sufficient to depend on the documents available to her. The complexity of this case should have led her to actually conduct a physical hearing, call the witnesses, and ask probing questions."[18] These precautions were compelling because "[a]fter all, even Justices of th[e] Court were left bewildered by what was charged, leaving th[e] Court divided between Direct Bribery, Illegal Trading, or even Illegal Trafficking. The Solicitor General himself proposed that it was Conspiracy to Commit Illegal Trading which was being charged."[19]

36. In the case at bar, Petitioner has been effectively deprived of her liberty because of the hasty and baseless issuance by respondent judge of the warrant of arrest, despite all the warning signs. The effect of this malicious use of judicial process has been the continued pre-trial detention of Petitioner for a crime that even the Members of the Honorable Court cannot agree on.

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[16] J. Leonen's *Dissenting Opinion*, p. 1, second paragraph.

[17] *Ibid.,* p. 4, first full paragraph.

[18] *Ibid.*, p. 44, second paragraph.

[19] *Ibid.*, third paragraph.

37. Justice Jardeleza notes: "the respondent judge violated Petitioner's constitutional right to due process and to speedy disposition of cases when she issued a warrant of arrest without resolving the issue of jurisdiction over the offense charged. She ought to have known that, under the Rules, she could not have proceeded with Petitioner's arraignment if she did not have jurisdiction over the offense charged. Respondent judge's error is aggravated by the fact that the lack of jurisdiction is patent on the face of the information."[20]

38. Just as glaring as the unconstitutional haste perpetrated by the respondent judge in this case—the "arrest now, worry later" plan—is the bogus character of the allegations as reflected in the Information, which has now found safe haven in the Honorable Court's decision. Petitioner cautions the Honorable Members of the Court to pause and consider the grave implications of sustaining an Information that does not allege any *corpus delicti.*

39. As was pointed out by Justice Carpio, "the Information in Criminal Case No. 17-165, as filed against Petitioner, clearly and egregiously does not specify any of the essential elements necessary to prosecute the crime of illegal sale of drugs under Section 5, or of illegal trade of drugs under Section 5 in relation to Section 3(jj). Indisputably, the Information does not identify the buyer, the seller, the object, or the consideration of the illegal sale or trade. The Information also does not make any allegation of delivery of the drugs illegally sold or traded nor of their payment. The Information does not state the kind and quantity of the drugs subject of the illegal sale or trade."[21]

40. Justice Carpio's warning that "the actual sale or trade of dangerous drugs can never be established"[22] given such defective Information carries a dangerous practical consequence: it is a virtual license for law enforcement agencies acting through prosecutors and judges to concoct more fake charges based on falsified affidavits. Citizens ought to shudder at the thought of this new weapon of misconduct that can be used to harass and mulct the innocent.

41. The "failure to allege any of the essential elements of the offense invariably means that probable cause cannot be determined

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[20] J. Jardeleza's *Dissenting Opinion*, p. 11, first full paragraph, fourth sentence.

[21] J. Carpio's *Dissenting Opinion*, p. 12, 3rd paragraph.

[22] *Ibid.*, 4th paragraph.

on the basis of the Information, both as to the commission of the offense and as to the issuance of the warrant of arrest."[23]

42. Thus, not only should the respondent judge not have issued a warrant of arrest, she also should have known that the defect in the Information means that under no circumstances can Petitioner be held guilty of a crime for which the most important element does not exist.

43. In view of these dangers, Petitioner worries, not just for herself, but for everyone else who becomes a target of an administration that has shown no qualms about running roughshod over constitutional guarantees to obtain the result it desires. With its decision, the Honorable Court may have effectively brought forth the era of "*Tanim Kaso.*" Petitioner hopes the Honorable Court remedies this grave error.

## III. THE *SANDIGANBAYAN*, NOT THE REGIONAL TRIAL COURT, HAS JURISDICTION OVER PETITIONER'S CASE.

44. The *Sandiganbayan* is the tribunal that has jurisdiction over the charges against the Petitioner based on the allegations in the Information and the governing law on the matter. This notwithstanding, a majority of the Members of the Honorable Court declared that "[t]he pertinent special law governing drug-related cases is RA 9165, which updated the rules provided in RA 6425, otherwise known as the Dangerous Drugs Act of 1972. A plain reading of RA 9165, as of RA 6425, will reveal that the jurisdiction over drug-related cases is exclusively vested with the Regional Trial Court and no other."[24]

45. This so-called plain reading flies in the face of settled jurisprudence and the *current* language of the statute, as pointed out by the dissenting justices.

46. Justice Perlas-Bernabe conducted a survey of the relevant jurisprudence, which indicates the basic test to determine whether

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[23] *Ibid.*, p. 16, 2nd full paragraph.

[24] *Decision* dated 10 October 2017, p. 29, 3rd paragraph.

the *Sandiganbayan* has jurisdiction over a case: Does the Information allege a close or intimate connection between the offense charged and the accused's public office?[25]

47. She declares: "[t]he Information against petitioner clearly passes this test. For, indeed, it cannot be denied that petitioner could not have committed the offense of Illegal Drug Trading as charged without her holding her office as DOJ Secretary. Her alleged complicity in the entire drug conspiracy hinges on no other than her supposed authority to provide high-profile inmates in the NBP protection and/or special concessions which enabled them to carry out illegal drug trading inside the national penitentiary."[26]

48. Chief Justice Sereno analyzed in depth the Information and the affidavits against Petitioner and concluded that "petitioner is not charged with having committed any other act in a private, non-official capacity to further the trade in drugs. It is, therefore, indubitable that she is being charged in her former capacity as a public official and for having committed violations of RA 9165 by using her office as a means of committing the crime of illegal trading in dangerous drugs under Section 5 in relation to Section 3(jj), Section 26(b), and Section 28."[27]

49. The Chief Justice also extensively analyzed the legislative history of the *Sandiganbayan* statutes and found that it was "the intention of Congress to focus on the expertise of the *Sandiganbayan* not only on high-ranking public officials, but also on high-profile crimes committed in relation to public office. At the outset, the fact that the crime was committed by a high-ranking public official as defined by the Sandigabayan law makes it a high-profile crime in itself. However, the most succinct display of the legislative intention is the recent passage of R.A. 10660, which transfers so-called minor cases to the regional trial courts."[28]

50. Justice Carpio complains: "[i]n insisting on the jurisdiction of the RTC, the *ponencia* sets aside R.A. No. 10660 **as if this law does not exist at all**."[29] He states that "the *Sandiganbayan* has exclusive original jurisdiction in 'all cases' of bribery where the accused is a

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[25] J. Perlas-Bernabe's *Separate Concurring and Dissenting Opinion*, pp. 8 to 11.

[26] *Ibid.*, pp. 11 to 12.

[27] CJ. Sereno's *Dissenting Opinion*, p. 19, last paragraph.

[28] *Ibid.,* p. 41, first paragraph.

[29] J. Carpio's *Dissenting Opinion*, p. 21, last paragraph.

public official with a Salary Grade 27 or higher and the amount involved exceeds P1,000,000. Furthermore, the *Sandiganbayan* also exercises exclusive original jurisdiction in 'all cases' involving other offenses or felonies committed in relation to their office by the officials and employees enumerated under Section 4a, a situation applicable to petitioner Senator De Lima."[30]

51. Justice Leonen states that "[t]he legislative grant of jurisdiction to the *Sandiganbayan* can be no clearer than how it is phrased on Section 4 of Presidential Decree No. 1606 as amended by Republic Act No. 8429"[31] and concludes that "[j]urisdiction over crimes committed by a Secretary of Justice in relation to his or her office is explicit, unambiguous and specifically granted to the *Sandiganbayan* by law."[32]

52. Justice Leonen also complains that "the majority relies upon ambiguous inferences from provisions which do not categorically grant jurisdiction over crimes committed by public officers in relation to their office."[33]

53. Even Justice Peralta's Separate Opinion exposed as obviously unfounded the *ponencia*'s contention that the *Sandiganbayan* is simply an anti-graft court, when he took judicial notice of the *Sandiganbayan Statistics on Cases Filed, Pending and Disposed of from February 1979 to May 31, 2017,*[34] which shows that said special court tries "non-graft cases", such as Murder, Homicide, Robbery, Theft, and even Adultery and Concubinage.

54. What, therefore, bothers Petitioner is the apparent lengths to which the majority of the Members of the Honorable Court have gone to justify the conferment of jurisdiction over the respondent judge who, by the way, has shown an evident intent to ensure her pre-trial detention.

55. While the text of the various *Sandiganbayan* statutes, their legislative history, and the jurisprudence surrounding jurisdictional line-drawing between the regular courts and the *Sandiganbayan* clearly provide multiple justifications for holding that the respondent

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[30] *Ibid.*, p. 26, first paragraph.

[31] J. Leonen's *Dissenting Opinion*, p. 2, first full paragraph.

[32] *Ibid.*, second full paragraph.

[33] *Ibid.*, third full paragraph.

[34] Separate Opinon J. Peralta Pages 11-12.

judge had no jurisdiction over this case, the majority of the Members of the Honorable Court nonetheless managed to evade text, history, and structure to justify the actions of respondent judge in assuming jurisdiction.

## IV. THE HONORABLE COURT'S PROCEDURAL OBJECTIONS TO THE PETITION ARE NULLIFIED BY ITS OWN DECISION ON THE MERITS.

56. The majority of the Members of the Honorable Court objects to the Petition being decided on the merits on various grounds: violation of the doctrine of hierarchy, prematurity, forum shopping, and apparent defect in the verification.

57. With due respect, the gravity of the majority's procedural objections is disputed by its extended resolve to decide the case on the merits. The screaming attestation to this fact is the dispositive portion of the decision—

> WHEREFORE, the instant petition for prohibition and *certiorari* is DISMISSED for lack of merit. The Regional Trial Court of Muntinlupa City, Branch 204 is ordered to proceed with dispatch with Criminal Case No. 17-165.[35]

58. Violations of the doctrine of hierarchy, prematurity, rule on forum shopping, and defects in the verification warrant immediate dismissal of a petition as these defects either go into the jurisdiction of a court or the validity of the pleading itself.

59. It follows, therefore, that the Honorable Court's decision to proceed extensively with all the merit-based aspects of the Petition contradicts the apparent insistence to nitpick on the procedural aspects of this case. To be sure, the dispositive of the decision did not even mention the alleged procedural infirmities of the Petition.

60. Petitioner, thus, notes with amusement the majority's fixation with procedural standards and simultaneous regard for deciding the merits of this case. While the majority regards the

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[35] *Decision*, p. 49.

apparent procedural violations as grounds for "immediate dismissal," it nonetheless has shown focused attention on the substantive issues raised by the Petitioner. With due respect, this internal inconsistency betrays the majority's lack of intellectual investment in the alleged procedural defects in the Petition.

61. Indeed, the majority's interest in insisting on procedural discipline contrasts with the general attitude of the Honorable Court in the past two decades, with its repeated invocations of its authority to decide cases on the basis of its expanded jurisdiction under the grave abuse of discretion clause of the Constitution, and its permissive attitude in deciding cases that are of "transcendental importance."

62. In fact, Justice Peralta, who ostensibly voted with the majority, expressly and unequivocally admitted "the novelty and the transcendental importance of the jurisdictional issue raised by petitioner" in this case.[36]

63. Petitioner, therefore, does not wish to belabor the point considering that the Honorable Court itself proceeded with the merits of the Petition. She merely wishes to state her objections to the alleged defects in the Petition, objections that are extensively discussed in the dissents of the other Members of the Honorable Court.[37]

64. Indeed, if the defects in the Petition were clear and unmistakable, one would expect some measure of unanimity among the Members of the Honorable Court, not vigorous and polar disagreement. Thus, regardless of anyone's attitude towards these procedural safeguards—liberal or strict—open-minded observers will have to agree that there exists an honest disagreement over these supposed defects. For Petitioner, that is more than enough justification for proceeding on the merits of her claims, which all the Members of the Honorable Court proceeded to do anyway.

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[36] J. Peralta's *Separate Opinion*, p. 1, second paragraph.

[37] See respective Dissenting Opinions of CJ. Sereno, J. Carpio, J. Leonen, J. Jardeleza, and J. Caguioa, and the Separate Concurring and Dissenting Opinion of J. Perlas-Bernabe.

# SUMMARY

65. There is no better way to describe the gravity of the injustice that has been committed against Petitioner than in the very own words of the Honorable Supreme Court in the case of *Allado v. Diokno*[38]:

> The facts of this case are fatefully distressing as they **showcase the seeming immensity of government power which when unchecked becomes tyrannical and oppressive.** Hence the Constitution, particularly the Bill of Rights, defines the limits beyond which lie unsanctioned state actions. But on occasion, for one reason or another, the State transcends this parameter. **In consequence, individual liberty unnecessarily suffers. The case before us, if uncurbed, can be illustrative of a dismal trend.** Needless injury of the sort inflicted by government agents is not reflective of responsible government. **Judges and law enforcers are not, by reason of their high and prestigious office, relieved of the common obligation to avoid deliberately inflicting unnecessary injury**.
>
> The sovereign power has the inherent right to protect itself and its people from vicious acts which endanger the proper administration of justice; hence, the State has every right to prosecute and punish violators of the law. This is essential for its self- preservation, nay, its very existence. **But this does not confer a license for pointless assaults on its citizens**. The right of the State to prosecute is not a *carte blanche* for government agents to defy and disregard the rights of its citizens under the Constitution. **Confinement, regardless of duration, is too high a price to pay for reckless and impulsive prosecution.** Hence, even if we apply in this case the "multifactor balancing test" which requires the officer to weigh the manner and intensity of the interference on the right of the people, the gravity of the crime committed and the circumstances attending the incident, still we cannot see probable cause to order the detention of petitioners.
>
> **The purpose of the Bill of Rights is to protect the people against arbitrary and discriminatory use of political power**. This bundle of rights guarantees the preservation of our natural rights which include personal liberty and security against invasion by the government or any of its branches or instrumentalities. Certainly, in

[38] 301 Phil. 213 (1994).

> the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former. Thus, relief may be availed of to stop the purported enforcement of criminal law where it is necessary to provide for an orderly administration of justice, to prevent the use of the strong arm of the law in an oppressive and vindictive manner, and to afford adequate protection to constitutional rights.
>
> **Perhaps, this case would not have reached this Court if petitioners were ordinary people submissive to the dictates of government.** They would have been illegally arrested and detained without bail. **Then we would not have the opportunity to rectify the injustice. Fortunately, the victims of injustice are lawyers who are vigilant of their rights, who fight for their liberty and freedom not otherwise available to those who cower in fear and subjection.**
>
> Let this then be a constant reminder to judges, prosecutors and other government agents tasked with the enforcement of the law that in the performance of their duties they must act with circumspection, lest their thoughtless ways, methods and practices cause a disservice to their office and maim their countrymen they are sworn to serve and protect. We thus caution government agents, particularly the law enforcers, to be more prudent in the prosecution of cases and not to be oblivious of human rights protected by the fundamental law. While we greatly applaud their determined efforts to weed society of felons, **let not their impetuous eagerness violate constitutional precepts which circumscribe the structure of a civilized community**. (Citations omitted; Emphasis supplied)

66. Indeed, "[c]onfinement, regardless of duration, is too high a price to pay for reckless and impulsive prosecution." Petitioner has been suffering the consequences of this reckless and impulsive prosecution for 253 days now.

67. And, indeed, it is fortunate that Petitioner is a lawyer, a lawmaker and a human rights defender "who [is] vigilant of her rights, who fight[s] for [her] liberty and freedom not otherwise available to those who cower in fear and subjection."

68. Otherwise, "the opportunity to rectify the injustice" might have never even arisen. And it may yet still be lost, and the failure to remedy this injustice will go down in history as a tragically novel case where the Supreme Court – the last bastion of the Rule of Law –

stood aside and willingly allowed a citizen, a human rights lawyer, and a dissenter to be incarcerated under charges that are demonstrably false based on the opinions of the members of the Honorable Court.

## EVIDENT PARTIALITY OF THE PONENTE JUSTICE PRESBITERO J. VELASCO JR.

1. The *ponente,* Justice Presbitero J. Velasco, should inhibit and desist from continuously ruling on the case at bar due to his evident partiality.

2. On 05 October 2017, a Motion to Inhibit has been filed against Justice Velasco, highlighting his partiality towards ***German Agojo y Luna***, the drug lord that he moved to be acquitted in the case of ***People of the Philippines vs German Agojo y Luna***.[39]

German Agojo, who is an integral witness in the case *a quo* and is also a Complainant against herein Petitioner under several criminal and administrative cases.

3. Despite the significance and detrimental consequence of his participation in the case at bar, Justice Velasco chose to improperly respond by issuing a press release regarding the Motion.

4. Such partiality, nevertheless, became even more pronounced in the manner by which Justice Velasco ruled on the case at bar. Revelatory in his own *ponencia* is a clear case of flip-flopping on his part as shown by the dissenting opinion of Justice Carpio.

5. Justice Velasco ruled in a long line of cases, namely in *People v. Guiara,*[40] *People v. Ara,*[41] *People v. Pagkalinawan,*[42] *People v. Politico,*[43] *People v. Manlangit,*[44] *People v. Aure,*[45] *People v. Quiamanlon,*[46]

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[39] G.R. No. 181318, 16 April 2009.

[40] 616 Phil. 290, 302 (2009).

[41] 623 Phil. 939, 955 (2009).

[42] 628 Phil. 101, 114 (2010).

[43] 647 Phil. 728, 738 (2010).

[44] 654 Phil. 427, 436 (2011).

[45] 654 Phil. 541, 553 (2011 ).

[46] 655 Phil. 695, 705 (2011).

*People v. Pambid*,[47] *People v. Roble*,[48] *People v. De la Cruz*,[49] *People v. Pascua*,[50] *People v. Musa*,[51] and *People v. Adrid*,[52] that the essential elements that have to be established for the crime of illegal sale of drugs under Section 5 of RA 9165 include: 1) the identity of the buyer and the seller, the object of the sale and the consideration; and 2) the delivery of the thing sold and the payment.

All these rulings had been conveniently ignored by Justice Velasco in the case at bar.

6. Since Justice Velasco has demonstrably failed to show the cold neutrality of an impartial judge, his continued failure to inhibit violates Petitioner's right to due process of law.

# PRAYER

**WHEREFORE,** premises considered, Petitioner respectfully prays for the following reliefs:

1. The immediate release of Petitioner from detention considering that there are not enough votes to sustain the validity of the Information in Criminal Case No. 17-165;

2. To dismiss aforesaid criminal case; and

3. The inhibition of Justice Velasco.

Petitioner likewise prays for other just and equitable reliefs.

RESPECTFULLY SUBMITTED

Quezon City for the City of Manila. 03 November 2017.

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[47] 655 Phil. 719, 732(2011).

[48] 663 Phil. 147, 157 (2011).

[49] 666 Phil. 593, 605-606(2011).

[50] 672 Phil. 276, 283-284 (2011).

[51] 698 Phil. 204, 215 (2012).

[52] 705 Phil. 654, 670 (2013).

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**EXPLANATION**
*(Re: Service by Registered Mail)*

The foregoing *Motion for Reconsideration* is being filed with the Honorable Court directly by personal service. Due to personnel constraints, copies of this petition were served upon the other parties via registered mail as warranted by the Rules of Court.

**TEDDY ESTEBAN F. RIGOROSO**