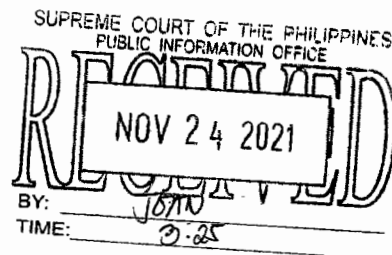




Republic of the Philippines
Supreme Court
Manila



THIRD DIVISION

PROSPERO A. PICHAY, JR.,

Petitioner,

G.R. Nos. 241742 and 241753-59

Present:

- versus -

LEONEN, J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., JJ.

THE HONORABLE
SANDIGANBAYAN (FOURTH
DIVISION) and PEOPLE OF
THE PHILIPPINES, as
represented by THE OFFICE OF
THE SPECIAL PROSECUTOR,
Respondents.

Promulgated:

May 12, 2021

Misdebat

X-----X

DECISION

DELOS SANTOS, J.:

The Case

This is a Petition for *Certiorari*¹ assailing the Resolutions dated March 16, 2018² and June 19, 2018³ of the Sandiganbayan in SB-16-CRM-0425 to 0432.

The Facts

On July 12, 2016, the Office of the Special Prosecutor filed eight informations against petitioner Prospero A. Pichay, Jr. (Pichay) with the

¹ Under Rule 65 of the 1997 Revised Rules of Civil Procedure; *rollo*, pp. 3-17.

² Penned by Associate Justice Reynaldo P. Cruz, with Associate Justices Alex L. Quiroz and Edgardo M. Caldoná, concurring; *id.* at 18-21.

³ *Id.* at 22-24.

✓

Sandiganbayan.⁴ The charges, among others, involved (1) violation of Section X126.2(c)(1)(2)⁵ of the Manual of Regulation for Banks (MORB),⁶ in relation to Sections 36 and 37 of Republic Act (RA) No. 7653;⁷ (2) violation of Sections 19 and 66 of RA No. 8791,⁸ in relation to Section 36 of RA No. 7653; (3) three counts of violation of Section 3(e) of RA No. 3019;⁹ and (4) three counts of malversation.¹⁰

As then Chairperson of the Local Water Utilities Administration, Pichay was faulted for his failure to comply with the requirement of prior approval of the (1) President, under Administrative Order No. 59; and (2) Monetary Board, under Section X126.2, Part I of the MORB, before purchasing the shares of stock of Express Savings Bank, Inc. (ESBI).¹¹

On July 18, 2016, the Sandiganbayan *motu proprio* issued a Hold Departure Order (HDO) Resolution, directing the Bureau of Immigration to prohibit Pichay and his co-accused from leaving the country for any destination abroad, except by prior written permission duly secured from and granted by the Sandiganbayan.¹²

In a Resolution¹³ dated October 18, 2016, the Sandiganbayan dismissed the charges against Pichay for (1) violation of Sections 19 and 66 of RA No. 8791, in relation to Section 36 of RA No. 7653; and (2) three counts of malversation.

⁴ Docketed as SB-16-CRM-0425 to 0432; *id.* at 5.

⁵ § X126.2 Transactions involving voting shares of stocks.

The following regulations shall govern all transactions involving voting shares of stocks in banks.

x x x x

c. Duties of a corporate secretary. In all transactions, which may lawfully come to the knowledge of the corporate secretary involving voting shares of stock of a bank such as but not limited to subscription/ issuance, purchase/sale, transfer, conversion of preferred shares or debt instruments into voting shares of stock, or registration of voting trust agreements, or any form of agreement vesting the right to vote or the control of the voting shares of stock of the bank, the corporate secretary shall, before registering the transaction or agreement in the stock and transfer book of the bank:

(1) ascertain the identity and citizenship of the subscriber, purchaser, transferee or recipient of voting shares of stock, voting trustee, proxy or person vested with the right to vote, and for this purpose, he should require the subscriber, transferee or recipient of voting shares of stock, voting trustee, proxy or the person vested with the right to vote to submit proof of citizenship, which may consist, in case of a corporation, of a certified true copy of the articles of incorporation, accompanied by the affidavit of the corporate secretary of the corporation, certifying to the correctness and accuracy of the list of stockholders, their citizenship and the percentage of shares owned by them x x x.

⁶ An authoritative codification of regulations governing banks which are all under the supervision of the Bangko Sentral ng Pilipinas; latest edition issued on October 31, 2015.

⁷ The New Central Bank Act; approved on June 14, 1993.

⁸ The General Banking Law of 2000; approved on May 23, 2000.

⁹ Anti-Graft and Corrupt Practices Act; approved on August 17, 1960.

¹⁰ *Rollo*, pp. 26-27.

¹¹ *Id.* at 38-49.

¹² *Supra* note 4.

¹³ Approved by Associate Justices Jose R. Hernandez, Alex L. Quiroz, and Geraldine Faith A. Econg; *id.* at 25-77.

Later, in a Resolution¹⁴ dated November 17, 2017, the Sandiganbayan found probable cause to indict Pichay for (1) violation of Section X126.2(c)(1)(2) of the MORB, in relation to Sections 36 and 37 of RA No. 7653 and (2) three counts of violation of Section 3(e) of RA No. 3019 for (a) fund releases for the purchase of 445,377 ESBI shares at ₱80,003,070.51, (b) deposit and/or capital infusion of ₱400,000,000.00, and (c) deposit of ₱300,000,000.00.

On February 14, 2018, Pichay filed a Motion to Lift HDO.¹⁵ The prosecution filed a Consolidated Comment/Opposition.¹⁶

Ruling of the Sandiganbayan

In a Resolution¹⁷ dated March 16, 2018, the Sandiganbayan denied the Motion to Lift HDO for lack of merit. The dispositive portion states:

WHEREFORE, premises considered, accused Prospero A. Pichay, Jr.'s Motion to Lift Hold Departure Order dated 14 February 2018, is hereby **DENIED** for lack of merit.

SO ORDERED.¹⁸

The Sandiganbayan ruled that the issuance of a HDO was considered as a valid restriction on Pichay's right to travel, as it was done in the exercise of the Court's inherent power to preserve and maintain its jurisdiction over the case and the person of the accused. It also stated that by posting bail for his provisional liberty, Pichay assumed the responsibility to appear in court whenever required by the Court or the Rules, which constituted a valid restriction on his right to travel.¹⁹

Pichay filed a motion for reconsideration, which was denied in a Resolution²⁰ dated June 19, 2018.

Hence, this petition.

¹⁴ Penned by Associate Justice Geraldine Faith Econg, with Associate Justices Alex L. Quiroz, Reynaldo P. Cruz, Sarah Jane T. Fernandez and Edgardo M. Caldon, concurring; *id.* at 78-107.

¹⁵ *Id.* at 108-113.

¹⁶ *Id.* at 114-119.

¹⁷ *Supra* note 2.

¹⁸ *Rollo*, p. 21.

¹⁹ *Id.* at 19-20.

²⁰ *Supra* note 3.

The Issue

Whether the Sandiganbayan gravely abused its discretion in denying the Motion to Lift HDO and in sustaining the HDO's validity.

The Court's Ruling

The petition lacks merit.

Pichay insists that the general rule is that the right to travel shall not be impaired and may be restricted only in the interest of national security, public safety, or public health, as may be provided by law. Pichay asserts that none of the allowable limitations on the right to travel are present in this case.²¹ Moreover, he maintains that the mere posting of bail does not operate as a waiver of the requisites prescribed by the Constitution for the curtailment of the right to travel.²²

On the other hand, respondent People of the Philippines contends that the issuance of a HDO does not violate Pichay's constitutional right to travel but is an exercise of the Sandiganbayan's power to preserve and maintain the effectiveness of its jurisdiction over the case and the person of Pichay.²³

The right to travel and to freedom of movement is a fundamental right guaranteed by the 1987 Constitution and the Universal Declaration of Human Rights (UDHR) to which the Philippines is a signatory.

Section 6, Article III of the 1987 Constitution states:

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

Article 13 of the UDHR provides:

Art. 13. Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country including his own, and to return to his country.

²¹ *Rollo*, pp. 7-10.

²² *Id.* at 10-11.

²³ *Id.* at 143-147.

However, the exercise of one's right to travel or the freedom to move from one place to another is not absolute. "There are constitutional, statutory, and inherent limitations regulating the right to travel."²⁴

As stated under the 1987 Constitution, courts can impair the right to travel on the grounds of "national security, public safety, or public health" and "as may be provided by law."

Apart from constitutional limitations, there are also statutory and inherent limitations. In *Leave Division, OAS, OCA v. Heusdens*,²⁵ the Court enumerated some of the statutory limitations on the right to travel:

1] *The Human Security Act of 2010 or Republic Act (R.A.) No. 9372.* The law restricts the right to travel of an individual charged with the crime of terrorism even though such person is out on bail.

2] *The Philippine Passport Act of 1996 or R.A. No. 8239.* Pursuant to said law, the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen.

3] *The "Anti-Trafficking in Persons Act of 2003" or R.A. No. 9208.* Pursuant to the provisions thereof, the Bureau of Immigration, in order to manage migration and curb trafficking in persons, issued Memorandum Order Radjr No. 2011-011, allowing its Travel Control and Enforcement Unit to "offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking" from our ports.

4] *The Migrant Workers and Overseas Filipinos Act of 1995 or R.A. No. 8042, as amended by R.A. No. 10022.* In enforcement of said law, the Philippine Overseas Employment Administration (POEA) may refuse to issue deployment permit to a specific country that effectively prevents our migrant workers to enter such country.

5] *The Act on Violence against Women and Children or R.A. No. 9262.* The law restricts movement of an individual against whom the protection order is intended.

6] *Inter-Country Adoption Act of 1995 or R.A. No. 8043.* Pursuant thereto, the Inter-Country Adoption Board may issue rules restrictive of an adoptee's right to travel "to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child."²⁶

²⁴ *Genuino v. De Lima*, 829 Phil. 691, 716 (2018).

²⁵ 678 Phil. 328 (2011).

²⁶ *Id.* at 339-340.

In the present case, Pichay assails the HDO issued against him by the Sandiganbayan, stating that none of the allowable restrictions as provided for in the Constitution apply in his case.

We disagree.

In *Defensor-Santiago v. Vasquez*,²⁷ We explained that the powers of the courts include, among others, the issuance of HDOs:

Courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Therefore, while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has the power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction. Hence, demands, matters, or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.

Furthermore, a court has the inherent power to make interlocutory orders necessary to protect its jurisdiction. Such being the case, with more reason may a party litigant be subjected to proper coercive measures where he disobeys a proper order, or commits a fraud on the court or the opposing party, the result of which is that the jurisdiction of the court would be ineffectual. What ought to be done depends upon the particular circumstances.²⁸ (Citations omitted)

“The Sandiganbayan is a special court tasked to hear and decide cases against public officers and employees and entrusted with the difficult task of policing and ridding the government ranks of the dishonest and corrupt.”²⁹ While there is no law particularly vesting the Sandiganbayan the authority to issue HDOs, the same is not necessary for it to exercise this power. The Sandiganbayan is “given the full disposition of all the powers inherent in all

²⁷ 291 Phil. 664 (1993).

²⁸ Id. at 679-680.

²⁹ *Garcia v. Sandiganbayan*, G.R. Nos. 205904-06, October 17, 2018.

courts of justice to effectuate the exercise of its jurisdiction, including the issuance of HDOs, if in its good judgment, it finds necessary in the administration of justice.”³⁰

Thus, the HDO issued by the Sandiganbayan is but an exercise of its inherent power to preserve and maintain the effectiveness of its jurisdiction over the case and the person of Pichay.

The provisions stated in the Constitution, as well as the UDHR, should by no means be construed as delimiting the inherent power of the courts to use all means necessary to carry their orders into effect in criminal cases pending before them. When by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, process, and other means necessary to carry it into effect may be employed by such court or officer.³¹

Further, in this case, Pichay posted bail under the obligation that he will hold himself amenable at all times to the orders and processes of the court.

Section 1, Rule 114 of the Rules of Court provides:

SECTION 1. *Bail defined.* – Bail is 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 as required under the conditions hereinafter specified. Bail may be given in the form of corporate surety, property bond, cash deposit, or recognizance.

Pending trial, the objective is to relieve Pichay of imprisonment and the State of the burden of keeping him. This puts Pichay under the power of the court and secures his appearance to answer the call of the court and do what the law may require of him.

In *Manotoc, Jr. v. Court of Appeals*,³² We held that “[a] court has the power to prohibit a person admitted to bail from leaving the Philippines. This is a necessary consequence of the nature and function of a bail bond,”³³ which has remained unchanged whether under the 1935,³⁴ 1973,³⁵ or the

³⁰ Id.

³¹ Section 6, Rule 135 of the Rules of Court.

³² 226 Phil. 75 (1986).

³³ Id. at 82.

³⁴ Section 1(4), Article III of the 1935 Constitution:

SEC. 1. (4) The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired.

³⁵ Section 5, Article IV of the 1973 Constitution:

SEC. 5. The liberty of abode and of travel shall not, be impaired except upon lawful order of the court, or when necessary in the interest of national security, public safety, or public health.

1987 Constitution.³⁶

“A person facing criminal charges may be restrained by the court from leaving the country, or if abroad, compelled to return. [Also,] [a]n accused released on bail may be re-arrested without the necessity of a warrant if they attempt to depart from the Philippines without prior permission of the court where the case is pending.”³⁷

The condition imposed upon Pichay to make himself available at all times whenever the court requires his presence operates as a valid restriction on his right to travel.

As cited in the *Manotoc* case, which re-affirmed the case of *People v. Uy Tusing*,³⁸ We held that “the result of the obligation – of a surety to hold the accused amenable at all times to the orders and processes of the lower courts was to prohibit said accused from leaving the jurisdiction of the Philippines. Otherwise, said orders and processes would be nugatory, and, inasmuch as the jurisdiction of the court from which they issued does not extend beyond that of the Philippines, they would have no binding force outside of said jurisdiction.”

Criminal prosecutions should be allowed to run their course without undue delay. Pichay, as one facing criminal charges with the People of the Philippines as the offended party, should hold himself amenable to court orders and processes at all times. Otherwise, such orders and processes would serve no purpose if he would be allowed to leave the country, outside the reach of the courts. An accused in a criminal case may be issued an HDO, as a valid restriction on their right to travel, so that they may be dealt with in accordance with law.

In sum, Pichay failed to establish that the Sandiganbayan committed grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the HDO, in upholding its validity, and in denying the Motion to Lift the HDO. Clearly, pursuant to its inherent power as a court of justice, the Sandiganbayan acted within its jurisdiction in issuing said HDO.

WHEREFORE, the petition is **DISMISSED**. The Resolutions dated March 16, 2018 and June 19, 2018 of the Sandiganbayan in SB-16-CRM-0425 to 0432 are hereby **AFFIRMED**.

³⁶ See *Silverio v Court of Appeals*, 273 Phil. 128, 133-134 (1991).

³⁷ Id., citing *Cruz, Isagani A.*, Constitutional Law, 1987 Edition, p. 138.

³⁸ 61 Phil. 404, 408 (1935).

SO ORDERED.


EDGARDO L. DELOS SANTOS
Associate Justice

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice