EN BANC

G.R. No. 213847 – JUAN PONCE ENRILE, Petitioner, **v. SANDIGANBAYAN (THIRD DIVISION) AND PEOPLE OF THE PHILIPPINES,** Respondents.

Promulgated:
August 18, 2015

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DISSENTING OPINION

*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. - CONST., art. III, sec. 13*

The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread. –
The Red Lily, Chapter 7 (1894) by Anatole France,
French novelist (1844-1924)

LEONEN, *J:*

I dissent.

This Petition for Certiorari should not be granted. The action of the Sandiganbayan in denying the Motion to Fix Bail was proper. Bail is not a matter of right in cases where the crime charged is plunder and the imposable penalty is *reclusion perpetua.*

Neither was there grave abuse of discretion by the Sandiganbayan when it failed to release accused on bail for medical or humanitarian reasons. His release for medical and humanitarian reasons was not the basis for his prayer in his Motion to Fix Bail[1] filed before the Sandiganbayan. Neither did he base his prayer for the grant of bail in this Petition on his medical condition.

The grant of bail, therefore, by the majority is a special accommodation for petitioner. It is based on a ground never raised before the Sandiganbayan or in the pleadings filed before this court. The Sandiganbayan should not be faulted for not shedding their neutrality and

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[1] Petition for Certiorari, Annex I.

impartiality. It is not the duty of an impartial court to find what it deems a better argument for the accused at the expense of the prosecution and the people they represent.

The allegation that petitioner suffers from medical conditions that require very special treatment is a question of fact. We cannot take judicial notice of the truth contained in a certification coming from one doctor. This doctor has to be presented as an expert witness who will be subjected to both direct and cross-examination so that he can properly manifest to the court the physical basis for his inferences as well as the nature of the medical condition of petitioner. Rebutting evidence that may be presented by the prosecution should also be considered. All this would be proper before the Sandiganbayan. Again, none of this was considered by the Sandiganbayan because petitioner insisted that he was entitled to bail as a matter of right on grounds other than his medical condition.

Furthermore, the majority's opinion—other than the invocation of a general human rights principle—does not provide clear legal basis for the grant of bail on humanitarian grounds. Bail for humanitarian considerations is neither presently provided in our Rules of Court nor found in any statute or provision of the Constitution.

This case leaves this court open to a justifiable criticism of granting a privilege ad hoc: only for one person—petitioner in this case.

Worse, it puts pressure on all trial courts and the Sandiganbayan that will predictably be deluged with motions to fix bail on the basis of humanitarian considerations. The lower courts will have to decide, without guidance, whether bail should be granted because of advanced age, hypertension, pneumonia, or dreaded diseases. They will have to decide whether this is applicable only to Senators and former Presidents charged with plunder and not to those accused of drug trafficking, multiple incestuous rape, serious illegal detention, and other crimes punishable by *reclusion perpetua* or life imprisonment. They will have to decide whether this is applicable only to those who are in special detention facilities and not to the aging or sick detainees in overcrowded detention facilities all over this country.

Our trial courts and the Sandiganbayan will decide on the basis of personal discretion causing petitions for certiorari to be filed before this court. This will usher in an era of truly selective justice not based on clear legal provisions, but one that is unpredictable, partial, and solely grounded on the presence or absence of human compassion on the day that justices of this court deliberate and vote.

Not only is this contrary to the Rule of Law, it also undermines the legitimacy and the stability of our entire judicial system.

I

On June 5, 2014, Senator Juan Ponce Enrile (Enrile) was charged with the crime of plunder punishable under Republic Act No. 7080.[2] Section 2 of this law provides:

> SEC. 2. *Definition of the Crime of Plunder, Penalties.* - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder ***and shall be punished by reclusion perpetua to death***[.] (Emphasis supplied)

On June 10, 2014, Enrile filed an Omnibus Motion before the Sandiganbayan, praying that he be allowed to post bail if the Sandiganbayan should find probable cause against him.[3] On July 3, 2014, the Sandiganbayan denied the Omnibus Motion on the ground of prematurity since no warrant of arrest had been issued at that time. In the same Resolution, the Sandiganbayan ordered Enrile's arrest.[4]

On the same day the warrant of arrest was issued and served, Enrile proceeded to the Criminal Investigation and Detection Group of the Philippine National Police in Camp Crame, Quezon City.[5]

On July 7, 2014, Enrile filed a Motion to Fix Bail, arguing that his alleged age and voluntary surrender were mitigating and extenuating circumstances that would lower the imposable penalty to *reclusion temporal*.[6] He also argued that his alleged age and physical condition indicated that he was not a flight risk.[7] His prayer states:

> WHEREFORE, accused Enrile prays that the Honorable Court allow Enrile to post bail, and forthwith set the amount of bail pending determination that (a) evidence of guilt is strong; (b) uncontroverted mitigating circumstances of at least 70 years old and voluntary surrender

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2 An Act Defining and Penalizing the Crime of Plunder, as amended by Rep. Act No. 7659 (1993).
3 Ponencia, p. 2.
4 Id.
5 Id.
6 Petition for Certiorari, Annex I, pp. 4–5.
7 Id. at 5.

> will not lower the imposable penalty to reclusion temporal; and (c) Enrile is a flight risk [sic].[8]

The Office of the Ombudsman filed its Opposition to the Motion to Fix Bail[9] dated July 9, 2014. Enrile filed a Reply[10] dated July 11, 2014.

Pending the resolution of his Motion to Fix Bail, Enrile filed a Motion for Detention at the PNP General Hospital[11] dated July 4, 2014, arguing that "his advanced age and frail medical condition"[12] merit hospital arrest in the Philippine National Police General Hospital under such conditions that may be prescribed by the Sandiganbayan.[13] He also prayed that in the event of a medical emergency that cannot be addressed by the Philippine National Police General Hospital, he may be allowed to access an outside medical facility.[14] His prayer states:

> WHEREFORE, accused Enrile prays that the Honorable Court temporarily place him under hospital confinement at the PNP General Hospital at Camp Crame, Quezon City, with continuing authority given to the hospital head or administrator to exercise his professional medical judgment or discretion to allow Enrile's immediate access of, or temporary visit to, another medical facility outside of Camp Crame, in case of emergency or necessity, secured with appropriate guards, but after completion of the appropriate medical treatment or procedure, he be returned forthwith to the PNP General Hospital.[15]

After the prosecution's submission of its Opposition to the Motion for Detention at the PNP General Hospital, the Sandiganbayan held a hearing on July 9, 2014 to resolve this Motion.

On July 9, 2014, the Sandiganbayan issued an Order allowing Enrile to remain at the Philippine National Police General Hospital for medical examination until further orders of the court.[16]

This Order regarding his detention at the Philippine National Police General Hospital is ***not the subject of this Petition for Certiorari. Enrile did not ask that this Order be declared invalid or null and void.***

On July 14, 2014, the Sandiganbayan issued the Resolution[17] denying Enrile's Motion to Fix Bail for being premature,[18] stating that:

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8 Id. at 6–7.
9 Petition for Certiorari, Annex J.
10 Petition for Certiorari, Annex K.
11 Petition for Certiorari, Annex H.
12 Id. at 2.
13 Id.
14 Id.
15 Id. at 3.
16 Petition for Certiorari, Annex O, p. 5.

> [I]t is only after the prosecution shall have presented its evidence and the Court shall have made a determination that the evidence of guilt is not strong against accused Enrile can he demand bail as a matter of right. Then and only then will the Court be duty-bound to fix the amount of his bail.
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> To be sure, no such determination has been made by the Court. In fact, accused Enrile has not filed an application for bail. Necessarily, no bail hearing can even commence. It is thus exceedingly premature for accused Enrile to ask the Court to fix his bail.[19]

Enrile filed a Motion for Reconsideration,[20] reiterating that there were mitigating and extenuating circumstances that would modify the imposable penalty and that his frail health proved that he was not a flight risk.[21] The Sandiganbayan, however, denied the Motion on August 8, 2014.[22] Hence, this Petition for Certiorari was filed.

II

The Sandiganbayan did not commit grave abuse of discretion when it denied the Motion to Fix Bail for prematurity. It was following entrenched and canonical procedures for bail based upon the Constitution and the Rules of Court.

A trial court—in this case, the Sandiganbayan—acquires jurisdiction over the person of the accused through his or her arrest.[23] The consequent detention is to ensure that the accused will appear when required by the Rules and by order of the court trying the offense.[24] The provisions on bail provide a balance between the accused's right to be presumed innocent on one hand and the due process rights of the state to be able to effect the accused's prosecution on the other hand. *That balance is not exclusively judicially determined. The Constitution frames judicial discretion.*

Thus, Article III, Section 13 states:

ARTICLE III

Bill of Rights

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17 Petition for Certiorari, Annex A.
18 Id. at 6 and 10.
19 Id. at 6.
20 Petition for Certiorari, Annex L.
21 Id. at 3–5.
22 Petition for Certiorari, Annex B, p. 14.
23 *See Fiscal Gimenez v. Judge Nazareno*, 243 Phil. 274, 278 (1988) [Per J. Gancayco, En Banc].
24 *See* REV. RULES OF CRIM. PROC., Rule 114, sec. 3.

. . . .

> SECTION 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 doctrine on bail is so canonical that it is clearly provided in our Rules of Court. The grant of bail is ordinarily understood as two different concepts: (1) bail as a matter of right and (2) bail as a matter of discretion. Thus, Sections 4 and 5 of Rule 114 provide:

> **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.
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> **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.

Then in Section 7 of Rule 114:

> **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***. (Emphasis supplied)

The mandatory bail hearing is only to determine the amount of bail when it is a matter of right. On the other hand, mandatory bail hearings are held when an accused is charged with a crime punishable by *reclusion perpetua* or life imprisonment, not only to fix the amount of bail but fundamentally to determine whether the evidence of guilt is strong.

The mandatory character of a bail hearing was first addressed in the 1945 case of *Herras Teehankee v. Rovira*[25] where this court ordered the People's Court to conduct a bail hearing despite the accused being charged with a capital offense.[26] This court reasoned that "the hearing is for the purpose of enabling the People's Court to exercise its sound discretion as to whether or not under the Constitution and laws in force[,] petitioner is entitled to provisional release under bail."[27]

A year later, this court clarified its orders to the People's Court and gave the following instructions:

> (1) In capital cases like the present, when the prosecutor does not oppose the petition for release on bail, the court should, as a general rule, in the proper exercise of its discretion, grant the release after the approval of the bail which it should fix for the purpose;
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> (2) But if the court has reasons to believe that the special prosecutor's attitude is not justified, it may ask him questions to ascertain the strength of the state's evidence or to judge the adequacy of the amount of bail;
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> (3) When, however, the special prosecutor refuses to answer any particular question on the ground that the answer may involve a disclosure imperiling the success of the prosecution or jeopardizing the public interest, the court may not compel him to do so, if and when he exhibits a statement to that effect of the Solicitor General, who, as head of the Office of Special Prosecutors, is vested with the direction and control of the prosecution, and may not, even at the trial, be ordered by the court to present evidence which he does not want to introduce—provided, of course, that such refusal shall not prejudice the rights of the defendant or detainee.[28]

The ruling in *Herras Teehankee* was applied in *Ocampo v. Bernabe*:[29]

> We have held in Herras Teehankee vs. Director of Prisons, that all persons shall before conviction be bailable except when the charge is a capital offense and the evidence of guilt is strong. *The general rule, therefore, is that all persons, whether charged or not yet charged, are, before their conviction, entitled to provisional release on bail, the only exception being where the charge is a capital offense and the evidence of guilt is found to be strong. At the hearing of the application for bail, the burden of showing that the case falls within the exception is on the prosecution, according to Rule 110, section 7.* The determination of whether or not the evidence of guilt is strong is, as stated in the Herras Teehankee case, a matter of judicial discretion. This discretion, by the very nature of things, may rightly be exercised only after the evidence is submitted to the court at the hearing. Since the discretion is directed to the weight of evidence and since evidence cannot properly be weighed if not

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25 75 Phil. 634 (1945) [Per J. Hilado, En Banc].
26 Id. at 644.
27 Id.
28 *Herras Teehankee v. Director of Prisons*, 76 Phil. 756, 774 (1946) [Per J. Hilado, En Banc].
29 77 Phil. 55 (1946) [Per C.J. Moran, En Banc].

> duly exhibited or produced before the court, it is obvious that a proper exercise of judicial discretion requires that the evidence of guilt be submitted to the court, the petitioner having the right of cross-examination and to introduce his own evidence in rebuttal. Mere affidavits or recital of their contents are not sufficient since they are mere hearsay evidence, unless the petitioner fails to object thereto.[30] (Emphasis supplied, citations omitted)

Herras Teehankee was also applied in *Feliciano v. Pasicolan, etc., et al.*[31] and *Siazon v. Hon. Presiding Judge of the Circuit Criminal Court, etc., et al*.[32]

We have disciplined numerous judges who violated this court's instructions on the application of the constitutional provisions regarding bail.

Basco v. Judge Rapatalo[33] outlines these administrative cases promulgated from 1981 to 1996.[34] Unfortunately, there were still administrative complaints filed against judges for failing to hold a hearing for bail even after the promulgation of *Basco*.

In *Cortes v. Judge Catral*,[35] this court ordered Judge Catral to pay a fine of □20,000.00 for granting bail to the accused charged with capital offenses.[36] This court could only lament on the deluge of these administrative cases, stating:

> It is indeed surprising, not to say, alarming, that the Court should be besieged with a number of administrative cases filed against erring judges involving bail. After all, there is no dearth of jurisprudence on the basic principles involving bail. As a matter of fact, the Court itself, through its Philippine Judicial Academy, has been including lectures on the subject in the regular seminars

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30 Id. at 58.

31 112 Phil. 781, 782–783 (1961) [Per J. Natividad, En Banc].

32 149 Phil. 241, 247 (1971) [Per J. Makalintal, En Banc].

33 336 Phil. 214 (1997) [Per J. Romero, Second Division].

34 Id. at 221–227, *citing People v. Mayor Sola, et al.*, 191 Phil. 21 (1981) [Per C.J. Fernando, En Banc], *People v. Hon. San Diego, etc., et al.*, 135 Phil. 514 (1968) [Per J. Capistrano, En Banc], *People v. Judge Dacudao*, 252 Phil. 507 (1989) [Per J. Gutierrez, Jr., Third Division], *People v. Calo, Jr.*, 264 Phil. 1007 (1990) [Per J. Bidin, En Banc], *Libarios v. Dabalos*, A.M. No. RTJ-89-286, July 11, 1991, 199 SCRA 48 [Per J. Padilla, En Banc], *People v. Nano*, G.R. No. 94639, January 13, 1992, 205 SCRA 155 [Per J. Bidin, Third Division], *Pico v. Combong, Jr.,* A.M. No. RTJ-91-764, November 6, 1992, 215 SCRA 421 [Per Curiam, En Banc], *De Guia v. Maglalang*, A.M. No. RTJ-89-306, March 1, 1993, 219 SCRA 153 [Per Curiam, En Banc], *Borinaga v. Tamin*, A.M. No. RTJ-93-936, September 10, 1993, 226 SCRA 206, 216 [Per J. Regalado, En Banc], *Aurillo, Jr. v. Francisco*, A.M. No. RTJ-93-1097, August 12, 1994, 235 SCRA 283 [Per J. Padilla, En Banc], *Estoya v. Abraham-Singson*, A.M. No. RTJ-91-758, September 26, 1994, 237 SCRA 1 [Per Curiam, En Banc], *Aguirre v. Belmonte*, A.M. No. RTJ-93-1052, October 27, 1994, 237 SCRA 778 [Per J. Regalado, En Banc], *Lardizabal v. Reyes*, A.M No. MTJ-94-897, December 5, 1994, 238 SCRA 640 [Per J. Padilla, En Banc], *Guillermo v. Judge Reyes, Jr., etc.*, 310 Phil. 176 (1995) [Per J. Regalado, Second Division], *Santos v. Judge Ofilada*, 315 Phil. 11 (1995) [Per J. Regalado, En Banc], *Sule v. Biteng*, 313 Phil. 398 (1995) [Per J. Davide, Jr., En Banc], and *Buzon, Jr. v. Judge Velasco*, 323 Phil. 724 (1996) [Per J. Panganiban, En Banc].

35 344 Phil. 415 (1997) [Per J. Romero, En Banc].

36 Id. at 430–431.

> conducted for judges. Be that as it may, we reiterate the following duties of the trial judge in case an application for bail is filed:
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> "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 (Section 18, Rule 114 of the Rules of Court as amended);
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> 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; (Section 7 and 8, supra)
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> 3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;
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> 4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bailbond (Section 19, supra) Otherwise petition should be denied."
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> With such succinct but clear rules now incorporated in the Rules of Court, trial judges are enjoined to study them well and be guided accordingly. Admittedly, judges cannot be held to account for an erroneous decision rendered in good faith, but this defense is much too frequently cited even if not applicable. A number of cases on bail having already been decided, this Court justifiably expects judges to discharge their duties assiduously. For a judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles. Faith in the administration of justice can only be engendered if litigants are convinced that the members of the Bench cannot justly be charged with a deficiency in their grasp of legal principles.[37]

The guidelines in *Cortes* fell on deaf ears as administrative cases continued to be filed against judges who failed to hold hearings in applications for bail.

In *Docena-Caspe v. Judge Bugtas*,[38] the accused was charged with murder.[39] Judge Bugtas initially denied the accused's petition for bail but granted his motion for reconsideration and set his bail without a hearing.[40] As a result, Judge Bugtas was ordered to pay a fine of □20,000.00[41] for being "grossly ignorant of the rules and procedures in granting or denying bail[.]"[42]

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37 Id., *citing Basco v. Judge Rapatalo*, 336 Phil. 214, 237 (1997) [Per J. Romero, Second Division].
38 448 Phil. 45 (2003) [Per J. Ynares-Santiago, First Division].
39 Id. at 48.
40 Id. at 49–50.
41 Id. at 56–57.
42 Id. at 56.

In *Marzan-Gelacio v. Judge Flores*,[43] the erring judge was ordered to pay a fine of □10,000.00 for granting bail to the accused charged with rape without a hearing.[44]

In *Chief State Prosecutor Zuño v. Judge Cabebe*,[45] Judge Cabebe was fined □20,000.00 for granting bail, without the requisite hearing, to the accused charged with possession of illegal drugs.[46]

A bail hearing is mandatory even if the accused has not filed an application for bail or the prosecutor already recommends an amount for bail.

In *Atty. Gacal v. Judge Infante*:[47]

> Even where there is no petition for bail in a case like Criminal Case No. 1138-03, a hearing should still be held. This hearing is separate and distinct from the initial hearing to determine the existence of probable cause, in which the trial judge ascertains whether or not there is sufficient ground to engender a well-founded belief that a crime has been committed and that the accused is probably guilty of the crime. The Prosecution must be given a chance to show the strength of its evidence; otherwise, a violation of due process occurs.
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> . . . .
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> Being the trial judge, Judge Infante had to be aware of the precedents laid down by the Supreme Court regarding the bail hearing being mandatory and indispensable. He ought to have remembered, then, that it was only through such hearing that he could be put in a position to determine whether the evidence for the Prosecution was weak or strong. Hence, his dispensing with the hearing manifested a gross ignorance of the law and the rules.[48]

In the present charge of plunder, petitioner now insists that this court justify that bail be granted without any hearing before the Sandiganbayan on whether the evidence of guilt is strong. During the hearing on petitioner's Motion to Fix Bail, the prosecution argued that any grant of bail should be based only on their failure to establish the strength of the evidence against him.[49] The prosecution had no opportunity to present rebuttal evidence based on the prematurity of the Motion.

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43 389 Phil. 372 (2000) [Per J. Ynares-Santiago, First Division].
44 Id. at 375 and 388.
45 486 Phil. 605 (2004) [Per J. Sandoval-Gutierrez, Third Division].
46 Id. at 611 and 618.
47 674 Phil. 324 (2011) [Per J. Bersamin, First Division].
48 Id. at 340–341, *citing Directo v. Judge Bautista*, 400 Phil. 1, 5 (2000) [Per J. Melo, Third Division] and *Marzan-Gelacio v. Judge Flores*, 389 Phil. 372, 381 (2000) [Per J. Ynares-Santiago, First Division].
49 Petition for Certiorari, Annex A, p. 2.

Building on consistent precedent, the Sandiganbayan correctly denied petitioner's Motion to Fix Bail for being premature. The denial is neither "capricious, whimsical, arbitrary [nor] despotic"[50] as to amount to grave abuse of discretion. It was in accord with the clear provisions of the Constitution, jurisprudence, and long-standing rules of procedure.

Thus, this could not have been the basis for declaring that the Sandiganbayan gravely abused its discretion when it denied petitioner's Motion to Fix Bail.

III

The Sandiganbayan did not commit grave abuse of discretion when it failed to release petitioner on bail for medical or humanitarian reasons. Petitioner did not ask that bail be granted because of his medical condition or for humanitarian reasons. Neither petitioner nor the prosecution as respondent developed their arguments on this point at the Sandiganbayan or in this court to establish the legal and factual basis for this special kind of bail in this case.

Yet, it now becomes the very basis for petitioner's grant of bail.

In his Petition before this court, petitioner argued that:

> A. Before judgment of the Sandiganbayan, Enrile is bailable as a matter of right. Enrile may be deemed to fall within the exception only upon concurrence of two (2) circumstances: (i) where the offense is punishable by reclusion perpetua, and (ii) when evidence of guilt is strong.
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> - It is the duty and burden of the prosecution to show clearly and conclusively that Enrile falls within the exception and exclusion from the right; and not the burden of Enrile to show entitlement to his right.
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> - The prosecution failed to establish that Enrile's case falls within the exception; hence, denial of his right to

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[50] *People v. Sandiganbayan*, 490 Phil. 105, 116 (2005) [Per J. Chico-Nazario, Second Division], *citing People v. Court of Appeals*, G.R. No. 144332, June 10, 2004, 431 SCRA 610, 616 [Per J. Callejo, Sr., Second Division], *Rodson Philippines, Inc. v. Court of Appeals*, G.R. No. 141857, June 9, 2004, 431 SCRA 469, 480 [Per J. Callejo, Sr., Second Division], *Matugas v. Commission on Elections*, 465 Phil. 299, 313 (2004) [Per J. Tinga, En Banc], *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, 467 Phil. 541, 553 (2004) [Per J. Callejo, Sr., Second Division], and *Condo Suite Club Travel, Inc. v. National Labor Relations Commission*, 380 Phil. 660, 667 (2000) [Per J. Quisumbing, Second Division].

bail by the Sandiganbayan was in grave abuse of discretion.

B. The prosecution failed to show clearly and conclusively that Enrile, if ever he would be convicted, is punishable by reclusion perpetua; hence, Enrile is entitled to bail as a matter of right.

- The Sandiganbayan ignored the fact that the penalty prescribed by the Anti-Plunder Law itself for the crime of plunder is not only reclusion perpetua but also the penalty next lower in degree (or reclusion temporal) by "consider(ing) the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code."

- Further proceedings to receive evidence of mitigating circumstances is a needless formality.

C. The prosecution failed to show clearly and conclusively that evidence of Enrile's guilt (if ever) is strong; hence, Enrile is entitled to bail as a matter of right.

- Notwithstanding that the prosecution did not assert, hence failed to raise in issue, in its Opposition to Enrile's motion for bail, that evidence of guilt is strong, in the light of the prosecution's continuing muteness to the defense's repeated challenge for the prosecution to produce any "single piece of paper showing that Enrile received even a single peso of kickback," the Sandiganbayan nonetheless insisted that Enrile must first initiate, and formally apply for, the formal proceedings ("bail hearing") before the prosecution may be called upon to discharge its duty of proving evidence of guilt is strong.

D. At any rate, Enrile may be bailable as he is not a flight risk.

- The exception to, or exclusion from, the right ("shall be bailable") does not become a prohibition ("shall not be bailable"). Indeed, the exception to a mandatory right ("shall") is a permissive right ("may").

- A liberal interpretation is consistent with the rights to presumptive innocence and non-deprivation of liberty without due process, and the theory behind the exception to right-to-bail.

- Hence, if the theory is clearly shown not to exist as to Enrile (i.e., Enrile is demonstrated not being a flight risk), then bail may be granted to him.

- Enrile is definitely not a flight risk, being of old age, frail physical and medical condition, and having voluntarily surrendered.

- Circumstances of official and social standing shows that Enrile is not a flight risk.

- Other circumstances negating Enrile's disposition to become a fugitive from justice are also present.

- The following illustrative cases decided by the Supreme Court show that at this stage of the proceeding, Enrile is entitled to bail a matter of right.[51]

The prayer in his Petition reads:

> WHEREFORE, petitioner Enrile respectfully prays that the Honorable Court:
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> a. ACT En Banc on the Petition for Certiorari;
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> b. EXPEDITE the certiorari proceedings;
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> c. SET the Petition for Certiorari for oral arguments; and
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> d. after due proceedings, ANNUL, REVERSE, and SET ASIDE the Sandiganbayan's Resolution dated July 14, 2014, and the Resolution dated August 8, 2014, and forthwith GRANT BAIL in favor of Enrile.
>
> Petitioner Enrile prays for such other and further relief as may be just and equitable.[52]

IV

This case entailed long, arduous, and spirited discussion among the justices of this court in and out of formal deliberations. As provided by our rules and tradition, the discussion was triggered by the submission of the member in charge of a draft early this year. The draft mainly adopted the legal arguments of the Petition which was centered on this court taking judicial notice of evidence to establish two generic mitigating circumstances that would lower the penalty to be imposed even before trial or a hearing for the determination of whether the evidence of guilt is strong happened before the Sandiganbayan. Associate Justice Estela Perlas-Bernabe and this member submitted their reflections on this issue. Refutations and arguments were vigorously exchanged in writing.

Associate Justice Estela Perlas-Bernabe and this member adopted the common position that there was no grave abuse of discretion and, therefore, the Petition should be dismissed. At most, the Motion to Fix Bail could be

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[51] Petition for Certiorari, pp. 9–12.
[52] Id. at 64.

treated by the Sandiganbayan as a petition or application for bail as in all cases where the statutorily imposable penalty is *reclusion perpetua*, death, or life imprisonment. Associate Justice Estela Perlas-Bernabe and this member differed only in the treatment of mitigating circumstances and the interpretation of *Bravo, Jr., etc. v. Hon. Borja, et al*.[53]

When this case was called again for deliberation during the En Banc session on August 11, 2015, the member in charge (now the ponente) proposed the idea of dropping all discussion on the legal points pertaining to whether bail was a matter of right and focusing the grant of bail on "humanitarian" grounds. The member in charge committed to circulate a draft for the consideration of all justices. This member expressed that he was open to listen to all arguments.

The revised draft that centered on granting bail on the basis of the medical condition of petitioner was circulated on August 14, 2015. After considered reflection, this member responded with a letter addressed to all the justices, which stated:

> In my view, there are several new issues occasioned by the revisions in the proposed ponencia that need to be threshed out thoroughly so that the Sandiganbayan can be guided if and when an accused charged with offenses punishable with reclusion perpetua should be released on bail "for humanitarian reasons."
>
> Among these are as follows:
>
> First: Did the Sandiganbayan commit grave abuse of discretion amounting to lack of jurisdiction when it applied the text of the Constitution, the rules of court, and the present canonical interpretations of these legal texts?
>
> Second: Are we taking judicial notice of the truth of the contents of the certification of a certain Dr. Gonzalez? Or are we suspending our rules on evidence, that is, doing away with cross examination and not appreciating rebutting evidence that may be or have been presented by the prosecution?
>
> Third: Did the Sandiganbayan commit grave abuse of discretion in appreciating the facts relating to the medical condition of the accused? Or, are we substituting our judgment for theirs?
>
> Fourth: What happens to the standing order of the Sandiganbayan which authorizes the accused to be brought to any hospital immediately if he exhibits symptoms which cannot be treated by the PNP hospital subject only to reportorial requirements to the court? Are we also declaring that the Sandiganbayan's decisions in relation to their supervision of the detention of the accused were tainted with grave abuse of discretion?

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[53] 219 Phil. 432 (1985) [Per J. Plana, First Division].

> Fifth: What, if any, is the legal basis for humanitarian releases on bail? Or, if we are able to hurdle the factual issues and find that there is actually a medical necessity, should his detention rather be modified? Do we have clear judicial precedents for hospital or house arrests for everyone?
>
> Sixth: Without conceding, if the accused is released on bail so that his medical condition can be attended to, should he be returned to detention when he becomes well? If he reports for work, does this not nullify the very basis of the ponencia?
>
> Seventh: What is the basis for □500,000.00 as bail? We have established rules on what to consider when setting the amount of bail. In relation to the accused and his circumstances, what is our basis for setting this amount? What evidence have we considered? Should this Court rather than the Sandiganbayan exercise this discretion?
>
> Eighth: What are our specific bases for saying that the medical condition of the accused entitles him to treatment different from all those who are now under detention and undergoing trial for plunder? Is it simply his advanced age? What qualifies for advanced age? Is it the medical conditions that come with advanced age? Would this apply to all those who have similar conditions and are also undergoing trial for plunder? Is he suffering from a unique debilitating disease which cannot be accommodated by the best care provided by our detention facilities or hospital or house arrest? Are there sufficient evidence and rules to support our conclusion?
>
> Ninth: Are there more specific and binding international law provisions, other than the Universal Declaration of Human Rights, which specifically compel the release of an accused in his condition? Or, are we now reading the general tenor of the declaration of human rights to apply specifically to the condition of this accused? What entitles the accused in this case to a liberal application of very general statements on human rights?[54]

The points in my letter were raised during the deliberations of August 18, 2015. The member in charge, however, did not agree to wait for a more extensive written reflection on the points raised. ***Insisting on a vote, he thus declared that he was abandoning the August 14, 2015 circulated draft centering on release on bail on humanitarian grounds for his earlier version premised on the idea that bail was a matter of right based on judicial notice and the judicial declaration of the existence of two mitigating circumstances.***

This was the version voted upon at about 11:00 a.m. of August 18, 2015. The only amendment to the majority opinion accepted by the member in charge was the increase of the proposed amount of bail to □1,000,000.00.

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[54] J. Leonen, Letter to Colleagues dated August 18, 2015.

The vote was 8 to 4 with Associate Justice Lucas P. Bersamin, who was the member in charge, emerging as the ponente. Chief Justice Maria Lourdes P. A. Sereno, Senior Associate Justice Antonio T. Carpio, Associate Justice Estela Perlas-Bernabe, and this member dissented.

During the oral arguments on the Torre de Manila case or at about 3:00 p.m., ***the ponente passed around a final copy of the majority opinion which was not the version voted upon during the morning's deliberation.*** Rather, the copy offered for signature was substantially the August 14, 2015 circulated version granting bail on humanitarian grounds.

The current ponencia now does away with petitioner's entire argument, stating that:

> Yet, we do not now determine the question of whether or not Enrile's averment on the presence of the two mitigating circumstances could entitle him to bail despite the crime alleged against him being punishable with reclusion perpetua, simply because the determination, being primarily factual in context, is ideally to be made by the trial court.[55] (Citation omitted)

Ordinarily, the drafts of the dissents would have been available to all members of the court at the time that the case was voted upon. But because the final version for signing was not the version voted upon, this member had to substantially revise his dissent. Since the issue of mitigating circumstances and bail as a matter of right was no longer the basis of the ponencia, Associate Justice Estela Perlas-Bernabe decided to graciously offer her points for the drafting of a single Dissenting Opinion and to abandon her filing of a Separate Opinion and joining this member.

The Internal Rules of the Supreme Court allows one week for the submission of a dissenting opinion. Thus, in Rule 13, section 7 of A.M. No. 10-4-20-SC:

> SEC. 7. *Dissenting, separate or concurring opinion*. - A Member who disagrees with the majority opinion, its conclusions, and the disposition of the case may submit to the Chief Justice or Division Chairperson a dissenting opinion, setting forth the reason or reasons for such dissent. A Member who agrees with the result of the case, but based on different reason or reasons may submit a separate opinion; a concurrence "in the result" should state the reason for the qualified concurrence. A Member who agrees with the main opinion, but opts to express other reasons for concurrence may submit a concurring opinion. *The dissenting, separate, or concurring opinion must be submitted within one week from the*

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[55] Ponencia, p. 10.

> *date the writer of the majority opinion presents the decision for the signature of the Members*. (Emphasis supplied)

But this member endeavored to complete his draft incorporating the ideas and suggestions of other dissenting justices within two days from the circulation of the majority opinion.

In the meantime, media, through various means, got wind of the vote and started to speculate on the contents of the majority opinion. This may have created expectations on the part of petitioner's friends, family, and counsel. The Presiding Justice of the Sandiganbayan, while admitting that the Decision had as yet not been promulgated and served, made announcements as to their readiness to receive the cash bond and process the release of the accused even if August 19, 2015 happened to be a holiday in Quezon City, which was the seat of their court.

This is the context of the apparent delay in the announcements regarding the vote and the date of promulgation of this judgment.

V

Despite brushing aside all of petitioner's arguments, the majority, instead of denying the Petition for Certiorari, grants it on some other ground that was not even argued nor prayed for by petitioner.

In essence, the majority now insists on granting bail merely on the basis of the certification in a Manifestation and Compliance dated August 14, 2014 by Dr. Jose C. Gonzales (Dr. Gonzales) stating that petitioner is suffering from numerous debilitating conditions.[56] This certification was submitted as an annex to a Manifestation[57] before this court regarding the remoteness of the possibility of flight of the accused not for the purposes of asking for bail due to such ailments.

Nowhere in the rules of procedure do we allow the grant of bail based on judicial notice of a doctor's certification. In doing so, we effectively suspend our rules on evidence by doing away with cross-examination and authentication of Dr. Gonzales' findings on petitioner's health in a hearing whose main purpose is to determine whether no kind of alternative detention is possible.

Under Section 2 of Rule 129 of the Revised Rules on Evidence:

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[56] The enumeration of diseases on page 12 of the ponencia is based on the certification of Dr. Gonzales. There was a hearing but for the purpose of determining whether hospital arrest can continue. The hearing was not for the purpose of determining whether bail should be granted on the basis of his medical condition.

[57] *Rollo*, p. 373.

> **SEC. 2.** *Judicial notice, when discretionary*. – A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

In *State Prosecutors v. Muro*:[58]

> Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety.[59]

Petitioner's medical ailments are not matters that are of public knowledge or are capable of unquestionable demonstration. His illness is not a matter of general notoriety.

Assuming that the medical ailments of petitioner are relevant issues for bail, the prosecution is now deprived of a fair opportunity to present any evidence that may rebut the findings of Dr. Gonzales or any other medical documents presented by petitioner in this Court. Due process requires that we remand this matter for a bail hearing to verify Dr. Gonzales' findings and to ensure that that is still the condition that prevails at present.

That we make factual determinations ourselves to grant provisional liberty to one who is obviously politically privileged without the benefit of the presentation of evidence by both the prosecution and the accused, without the prosecution being granted the opportunity to cross-examine the evidence, and without consideration of any rebutting evidence that may have been presented should a hearing be held, casts serious doubt on our neutrality and objectivity.

The better part of prudence is that we follow strictly our well-entrenched, long-standing, and canonical procedures for bail. Doctrinally, the matter to determine is whether the evidence of guilt is strong. This is to be examined when a hearing is granted as a mandatory manner after a petition for bail is filed by the accused. The medical condition of the accused, if any, should be pleaded and heard.

VI

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58 A.M. No. RTJ-92-876, September 19, 1994, 236 SCRA 505 [Per Curiam, En Banc].

59 Id. at 521–522, *citing* 20 Am. Jur., Evidence, Sec. 17, 48, *King v. Gallun, et al*., 109 U.S. 99, 27 L. ed. 870, and 31 C.J.S., Evidence, Secs. 6–7, 823.

Assuming without conceding that petitioner suffers from illnesses that require immediate medical attention, this court has not established clear guidelines for such releases. The closest that the majority opinion reaches for a standard is:

> Bail for the provisional liberty of the accused, *regardless of the crime charged*, should be allowed *independently of the merits of the charge*, provided his continued incarceration is clearly shown to be injurious to his health or to endanger his life. Indeed, denying him bail despite imperiling his health and life would not serve the true objective of preventive incarceration during trial.[60] (Emphasis in the original)

To see the logical fallacy of the argument we break it down to its premises:

Premise: There are those whose continued incarceration is clearly shown to be injurious to their health OR whose lives are endangered due to incarceration.

Premise: Petitioner is suffering from some ailments.

Therefore: Petitioner should be released.

There are various ways to see the fallacy of the argument.

It is true that it is the duty of courts to ensure that detention prisoners are humanely treated. Under A.M. No. 07-3-02-SC,[61] judges of lower courts are mandated to conduct monthly jail visitations in order to "[e]nsure the promotion and protection of the dignity and well being"[62] of detention prisoners. Detention prisoners may also be released to a medical facility on humanitarian grounds "if their continuous confinement during the pendency of their case would be injurious to their health or endanger their life."[63]

In many instances, alternative detention—whether temporary or permanent—is granted upon a clear showing before the trial court or the Sandiganbayan that the physical condition of the accused, as proven through evidence presented in open court, is absolutely requiring medical attention that could not be accommodated within the current custodial arrangements. Care should, however, be taken that such alternative custodial arrangements do not take place more than the time necessary to address the medical condition of the accused. Likewise, the Sandiganbayan should ensure that alternative custodial arrangements are not borne by the state and, therefore,

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60 Ponencia, p. 14.

61 *Re: Guidelines on the Jail Visitation and Inspection*. New guidelines are stated in OCA Circular No. 107-2013.

62 A.M. No. 07-3-02-SC (2008), sec. 1(3).

63 *De la Rama v. People's Court*, 77 Phil. 461, 465 (1946) [Per J. Feria, En Banc].

should be sensitive to the possibility that these alternatives are not seen as a privilege given to the wealthy or powerful detainees.

On July 9, 2014[64] and July 15, 2014,[65] the Sandiganbayan already issued Resolutions allowing accused to remain at the Philippine National Police General Hospital and continue medical examinations until further orders from the court, subject to reportorial requirements and at accused's personal expense. In particular, the Resolution dated July 9, 2014 states:

> Pending receipt of [Dr. Jose C. Gonzales's report], the Court will hold in abeyance action on accused Enrile's motion for detention at the PNP General Hospital. However, he is allowed to remain thereat until further orders from this Court. The Director or Administrator of PNP General Hospital is ***GRANTED AUTHORITY*** to allow accused Enrile to access another medical facility outside Camp Crame *only* (1) in case of emergency or necessity, and (2) the medical procedure required to be administered on accused Enrile is not available at, or cannot be provided for by the physicians of, the PNP General Hospital, ***ALL AT THE PERSONAL EXPENSE OF ACCUSED ENRILE***. After completion of the medical treatment or procedure outside Camp Crame, accused Enrile shall be returned forthwith to the PNP General Hospital. **The said director or administrator is *DIRECTED* to submit a report to the Court on such visit/s of accused Enrile to another medical facility on the day following the said visit/s.**[66] (Emphasis in the original)

The Resolution dated July 15, 2014 states:

> **WHEREFORE**, premises considered, Dr. Jose C. Gonzales, and/or any his duly authorized representative/s from the Philippine General Hospital, is ***DIRECTED*** to continue with the medical examination of accused Juan Ponce Enrile and to submit a report and recommendation to the Court within thirty (30) days from receipt hereof. The necessary medical examination/s and/or procedure/s as determined the said doctor/s shall be undertaken at PGH or any government hospital, which the medical team may deem to have the appropriate, suitable and/or modern equipment or medical apparatus and competent personnel to undertake the procedure/s, ***ALL AT THE PERSONAL EXPENSE OF ACCUSED JUAN PONCE ENRILE***. Pending the completion of the aforesaid medical examination/s and/or procedure/s and submission of the required report and recommendation, accused Juan Ponce Enrile is allowed to remain at the Philippine National Police General Hospital subject to conditions earlier imposed by the Court in its Resolution dated July 9, 2014.
>
> ***SO ORDERED***.[67]

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64 Petition for Certiorari, Annex O.
65 Petition for Certiorari, Annex P.
66 Petition for Certiorari, Annex O, p. 5.
67 Petition for Certiorari, Annex P, pp. 2–3.

These are standing orders of the Sandiganbayan that authorize accused to be brought to any hospital immediately if he exhibits symptoms that cannot be treated at the Philippine National Police General Hospital subject only to reportorial requirements to the court. In granting bail to petitioner, we are, in effect, declaring that the Sandiganbayan's decisions in relation to its supervision of the accused's detention were tainted with grave abuse of discretion.

However, these orders were not the subject of this Petition for Certiorari.

To the Sandiganbayan, based upon the facts as presented to it, accused does not seem to be suffering from a unique debilitating disease whose treatment cannot be provided for by our detention facilities and temporary hospital arrest in accordance with their order. ***How the majority arrived at a conclusion different from the Sandiganbayan has not been thoroughly explained. Neither did this issue become the subject of intense discussion by the parties through their pleadings.***

It is unclear whether this privilege would apply to all those who have similar conditions and are also undergoing trial for plunder. It is unclear whether petitioner's incarceration aggravates his medical conditions or if his medical conditions are simply conditions which come with advanced age.

The majority has not set specific bases for finding that the medical condition of petitioner entitles him to treatment different from all those who are now under detention and undergoing trial for plunder. There is no showing as to how grave his conditions are in relation to the facilities that are made available to him. There is also no showing as to whether any of his medical ailments is actually aggravating in spite of the best care available. If his health is deteriorating, there is no showing that it is his detention that is the most significant factor or cause for such deterioration.

Usually, when there is a medical emergency that would make detention in the hospital necessary, courts do not grant bail. They merely modify the conditions for the accused's detention. There is now no clarity as to when special bail based on medical conditions and modified arrest should be imposed.

Finally, there is no guidance as to whether this special bail based on medical condition is applicable only to those of advanced age and whether that advanced age is beyond 90 or 91 years old. There is no guidance as to whether this is applicable only to cases involving plunder. There is no guidance in the majority's opinion as to whether this is only applicable to the medical conditions or stature or titles of petitioner.

The majority has perilously set an unstated if not ambiguous standard for the special grant of bail on the ground of medical conditions.

Bail is not a matter of right merely for medical reasons. In *People v. Fitzgerald*:[68]

> Bail is not a sick pass for an ailing or aged detainee or prisoner needing medical care outside the prison facility. A mere claim of illness is not a ground for bail. It may be that the trend now is for courts to permit bail for prisoners who are seriously sick. There may also be an existing proposition for the "selective decarceration of older prisoners" based on findings that recidivism rates decrease as age increases.[69]

VII

Neither is there clarity in the majority opinion as to the conditions for this special kind of bail. Thus, the majority asserts:

> It is relevant to observe that granting provisional liberty to Enrile will then enable him to have his medical condition be properly addressed and better attended to by competent physicians in the hospitals of his choice. This will not only aid in his adequate preparation of his defense but, more importantly, will guarantee his appearance in court for the trial.[70]

Before the ink used to write and print the majority opinion and this dissent has dried, friends, family, and colleagues of petitioner already strongly predict that he would report immediately for work. This strongly indicates that the majority's inference as to the existence of very serious debilitating illnesses may have been too speculative or premature.

Significantly, there is no guidance to the Sandiganbayan as to whether bail then can be cancelled motu propio or upon motion. There is no guidance as to whether that motion to cancel bail should be filed before the Sandiganbayan or before this court.

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68 536 Phil. 413 (2006) [Per J. Austria-Martinez, First Division].

69 Id. at 428, *citing Release of Accused by Judge Muro in Non-Bailable Offense*, 419 Phil. 567, 581 (2001) [Per Curiam, En Banc], *People v. Judge Gako, Jr.*, 401 Phil. 514, 541 (2000) [Per J. Gonzaga-Reyes, Third Division], Ernesto Pineda, THE REVISED RULES ON CRIMINAL PROCEDURE 193 (2003) *which in turn cited De la Rama v. People's Court*, 77 Phil. 461, 465 (1946) [Per J. Feria, En Banc], Archer's case, 6 Gratt 705, *Ex parte* Smith, 2 Okla. Crim. Rep. 24, 99 Pfc. 893, and Max Rothman, Burton Dunlop, and Pamela Entzel, ELDERS, CRIME AND THE CRIMINAL JUSTICE SYSTEM 233–234 (2000).

70 Ponencia, p. 15.

The crime charged in petitioner's case is one where the imposable penalty is *reclusion perpetua*. The Constitution and our rules require that bail can only be granted after granting the prosecution the opportunity to prove that evidence of guilt is strong. The special grant of bail, due to medical conditions, is unique, extraordinary, and exceptional. To allow petitioner to go about his other duties would be to blatantly flaunt a violation of the provisions of the Constitution and our rules.

In other words, there is no rule on whether the grant of provisional liberty on the basis of humanitarian considerations extends even after the medical emergency has passed. Again, a case of a decision especially tailored for petitioner.

VIII

There is no evidentiary basis for the determination of □1,000,000.00 as the amount for bail. The original proposal of the member in charge was □100,000.00. This was increased to □500,000.00 in its revised proposal circulated on August 14, 2015. Then, upon the request of one member who voted with the majority, it was then increased to □1,000,000.00.

The rules guide courts on what to consider when setting the amount of bail.[71] The majority opinion is sparse on the evidence it considers for setting this particular amount. Again, the more prudent course of action would have been for the Sandiganbayan, not this court, to exercise its discretion in setting the amount of bail.

IX

There are no specific and binding international law provisions that compel this court to release petitioner given his medical condition. The Universal Declaration of Human Rights, relied upon in the majority opinion, is a general declaration[72] to uphold the value and dignity of every person.[73]

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[71] *See* REV. RULES OF CRIM. PROC., Rule 114, sec. 9, which states:
SEC. 9. *Amount of bail; guidelines*. – The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following factors:
(a) Financial ability of the accused to give bail;
(b) Nature and circumstances of the offense;
(c) Penalty for the offense charged;
(d) Character and reputation of the accused;
(e) Age and health of the accused;
(f) Weight of the evidence against the accused;
(g) Probability of the accused appearing at the trial;
(h) Forfeiture of other bail;
(i) The fact that the accused was a fugitive from justice when arrested; and
(j) Pendency of other cases where the accused is on bail.
Excessive bail shall not be required.

[72] In *Republic v. Sandiganbayan*, 454 Phil. 504, 545 (2003) [Per J. Carpio, En Banc], this court stated: "Although the signatories to the Declaration did not intend it as a legally binding document, being only

It does not prohibit the arrest of any accused based on lawful causes nor does it prohibit the detention of any person accused of crimes. It only implies that any arrest or detention must be carried out in a dignified and humane manner.

The majority opinion cites *Government of Hong Kong Special Administrative Region v. Hon. Olalia, Jr.*[74] as basis for the grant of bail on humanitarian reasons.[75] However, *Government of Hong Kong* does not apply to this case because the issue was on whether bail could apply to extradition cases. This court stated that because of the Universal Declaration of Human Rights, whose principles are now embodied in the Constitution, bail applies to all instances where an accused is detained pending trial, including administrative proceedings such as extradition. This court, however, does not state that the Universal Declaration of Human Rights mandates that bail must be granted in instances where the accused is of advanced age and frail health.

Petitioner's remedies under the Universal Declaration of Human Rights that safeguard his fundamental right to liberty are qualified by the Constitution. Article III, Section 13 of the Constitution clearly states that bail is available to all persons before conviction "except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong[.]" Even Article 29(2) of the Universal Declaration of Human Rights, the same document used by the majority opinion, provides that:

> (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

In any case, even this court in *Government of Hong Kong* was wary to grant bail without evidence presented that the accused was not a flight risk. For this reason, it **remanded** the case to the trial court[76] instead of applying the provisions of the Universal Declaration of Human Rights and

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a declaration, the Court has interpreted the Declaration as part of the generally accepted principles of international law and binding on the State."

73 Universal Declaration of Human Rights, art. 1 states that "[a]ll human beings are born free and equal in dignity and rights."

74 550 Phil. 63, 72 (2007) [Per J. Sandoval-Gutierrez, En Banc].

75 Ponencia, pp. 10–11.

76 *See Government of Hong Kong Special Administrative Region v. Hon. Olalia, Jr.*, 550 Phil. 63, 77 (2007) [Per J. Sandoval-Gutierrez, En Banc]. The dispositive portion reads: "WHEREFORE, we DISMISS the petition. This case is REMANDED to the trial court to determine whether private respondent is entitled to bail on the basis of 'clear and convincing evidence.' If not, the trial court should order the cancellation of his bail bond and his immediate detention; and thereafter, conduct the extradition proceedings with dispatch."

categorically stating that based on these principles alone, the accused was entitled to bail.

It is true that the Constitution is replete with provisions on both the respect for human dignity and the protection of human rights. These rights are applicable to those who, during the dark days of Martial Law, were illegally detained, tortured, and even involuntarily disappeared. There is, of course, no reason for these rights and the invocation of human dignity not to be applicable to Senators of our Republic.

However, the mere invocation of the broadest concept of human rights is not shibboleth. It should not be cause for us to be nonchalant about the existence of other constitutional and statutory provisions and the norms in our Rules of Court. The mere invocation of human rights does not mean that the Rule of Law is suspended. It is not a shortcut to arrive at the conclusion or result that we want. Rather, human rights are best entrenched with the Rule of Law. Suspending the applicability of clear legal provisions upon the invocation of human rights compels this court to do a more conscious and rigorous analysis of how these provisions violate specific binding human rights norms.

The majority opinion fails in this respect.

Liberty is indeed a cherished value. It is an intrinsic part of our humanity to fight for it and ensure that it allows all of us to lead the kind of lives that we will consider meaningful. This applies to petitioner as accused. *Yet it also applies with equal force to all the individuals in our communities and in this society.*

Our collective liberty, the kind that ensures our individual and collective meaningful existence, is put at risk if justice is wanting. Special privileges may be granted only under clear, transparent, and reasoned circumstances. Otherwise, we accept that there are just some among us who are elite. Otherwise, we concede that there are those among us who are powerful and networked enough to enjoy privileges not shared by all.

This dissent rages against such a premise. It is filled with discomfort with the consequences of the majority's position. It cannot accept any form of impunity.

X.

Plunder is not the only crime statutorily punished with the imposable penalty of *reclusion perpetua* or life imprisonment. Under the Revised

Penal Code, the following crimes, among others, carry this as maximum penalty:

(1) Parricide;[77]

(2) Murder;[78]

(3) Kidnapping and serious illegal detention;[79]

(4) Robbery with homicide;[80]

(5) Robbery with rape;[81]

(6) Robbery with serious physical injuries;[82]

(7) Attempted or frustrated robbery with homicide;[83]

(8) Rape;[84]

(9) Rape of children under 12 years old;[85]

(10) Sexual assault;[86] and

(11) Incestuous rape.[87]

Under special laws, the following crimes, among others, carry the maximum penalty of life imprisonment or *reclusion perpetua*:

(1) Carnapping with homicide or rape;[88]

(2) Sale of illegal drugs regardless of quantity and purity;[89]

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77 REV. PEN. CODE, art. 246.
78 REV. PEN. CODE, art. 248, as amended by Rep. Act No. 7659 (1993), sec. 6, and Rep. Act No. 9346 (2006), sec. 1.
79 REV. PEN. CODE, art. 267, as amended by Rep. Act No. 7659 (1993), sec. 8, and Rep. Act No. 9346 (2006), sec. 1.
80 REV. PEN. CODE, art. 294(1), as amended by Rep. Act No. 7659 (1993), sec. 9.
81 REV. PEN. CODE, art. 294(1), as amended by Rep. Act No. 7659 (1993), sec. 9.
82 REV. PEN. CODE, art. 294(2), as amended by Rep. Act No. 7659 (1993), sec. 9.
83 REV. PEN. CODE, art. 297.
84 REV. PEN. CODE, art. 266-A, as amended by Rep. Act No. 8353 (1997), sec. 2.
85 REV. PEN. CODE, art. 266-A(1)(d), as amended by Rep. Act No. 8353 (1997), sec. 2.
86 REV. PEN. CODE, art. 266-A(2), as amended by Rep. Act No. 8353 (1997), sec. 2.
87 REV. PEN. CODE, art. 266-B(1), as amended by Rep. Act No. 8353 (1997), sec. 2.
88 Rep. Act No. 6539 (1972), sec. 14, as amended by Rep. Act No. 7659 (1993), sec. 20 and Rep. Act No. 9346 (2006), sec. 1.
89 Rep. Act No. 9165 (2002), sec. 5.

(3) Illegal possession of 10 grams or more of heroin, 10 grams or more of cocaine, 50 grams or more of shabu, 500 grams or more of marijuana, or 10 grams or more of ecstasy;[90]

(4) Illegal possession of 10 grams to less than 50 grams of shabu;[91]

(5) Illegal possession of 5 grams to less than 10 grams of heroin, cocaine, shabu, or ecstasy;[92]

(6) Child prostitution;[93]

(7) Child trafficking;[94]

(8) Forcing a street child or any child to beg or to use begging as a means of living;[95]

(9) Forcing a street child or any child to be a conduit in drug trafficking or pushing;[96]

(10) Forcing a street child or any child to commit any illegal activities;[97] and

(11) Murder, homicide, other intentional mutilation, and serious physical injuries of a child under 12 years old.[98]

If we are to take judicial notice of anything, then it should be that there are those accused of murder, trafficking, sale of dangerous drugs, incestuous rape, rape of minors, multiple counts of rape, or even serious illegal detention who languish in overcrowded detention facilities all over our country. We know this because the members of this court encounter them through cases appealed on a daily basis. Many of them suffer from diseases that they may have contracted because of the conditions of their jails. But they and their families cannot afford hospitals better than what government can provide them. After all, they remain in jail because they may not have the resources to launch a full-scale legal offensive marked with the creativity of well-networked defense counsel. After all, they may have committed acts driven by the twin evils of greed or lust on one hand and poverty on the other hand.

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90 Rep. Act No. 9165 (2002), sec. 11, 1st par. (3)(4)(5)(7)(8).
91 Rep. Act No. 9165 (2002), sec. 11, 2nd par. (1).
92 Rep. Act No. 9165 (2002), sec. 11, 2nd par. (2).
93 Rep. Act No. 7610 (1992), sec. 5.
94 Rep. Act No. 7610 (1992), sec. 7.
95 Rep. Act No. 7610 (1992), sec. 10(e)(1)
96 Rep. Act No. 7610 (1992), sec. 10(e)(2).
97 Rep. Act No. 7610 (1992), sec. 10(e)(3).
98 Rep. Act No. 7610 (1992), sec. 10.

For them, there are no special privileges. The application of the law to them is often brute, banal, and canonical. Theirs is textbook equal treatment by courts.

Our precedents show that when there are far less powerful, less fortunate, poorer accused, this court has had no difficulty denying a motion to fix bail or motion to set bail where the crime charged carries the imposable penalty of *reclusion perpetua*. With less powerful accused, we have had no difficulty reading the plain meaning of Article III, Section 13 of the Constitution. With those who are less fortunate in life, there are no exceptions.

Petitioner in this case is unbelievably more fortunate.

There is a right, just, and legal way to do things for the right, just, and legal result. In my view, it is not right, just, and legal to grant bail, even for □1,000,000.00, without clearly articulating why the Sandiganbayan's actions were arbitrary, capricious, and whimsical.

In truth, the Sandiganbayan acted in accordance with law and with sufficient compassion. It did not gravely abuse its discretion. Thus, this Petition should be dismissed.

XI

Those that read a decision which does not fully respond to the legal issues outlined in this dissent may be tempted to conclude that the decision is the result of obvious political accommodation rather than a judicious consideration of the facts and the law. This case may benefit one powerful public official at the cost of weakening our legal institutions. If it is *pro hac vice*, then it amounts to selective justice. If it is meant to apply in a blanket manner for all other detainees, then it will weaken the administration of justice because the judicial standards are not clear.

Without further clarity, our signal to the various divisions of the Sandiganbayan hearing these complex and politically laden plunder cases can be misinterpreted. Rather than apply the Rule of Law without fear or favor, the sitting justices will become more sensitive to the demands of those who have political influence. After all, in their minds, even if they do what is expected of them, this court may still declare that the Sandiganbayan gravely abused its discretion.

The granting of bail is a judicial function circumscribed within the bounds of the Constitution. Our duty is to ensure the realization of the Rule

of Law even in difficult cases. This case does not really present any kind of legal complexity if we blind ourselves as to who is involved. It is complex only because it is political.

The grant of provisional liberty to petitioner without any determination of whether the evidence of guilt is strong violates the clear and unambiguous text of the Constitution. It may be that, as citizens, we have our own opinions on or predilections for how the balance of fundamental rights, liberties, and obligations should be. It may be that, as citizens, such opinions are founded on our wealth of knowledge and experience.

But, as members of this court, our duty is to enforce the exact textual formulation of the fundamental document written and ratified by the sovereign. This fealty to the text of the Constitution will provide us with a stable anchor despite the potential political controversies that swirl over the legal questions that we need to decide. It is also this fealty to the text of the Constitution that gives this court the legitimacy as the final bastion and the ultimate sentinel of the Rule of Law.

As the apex of the judiciary, the very sentinels of the Rule of Law, the court from whom all other courts—like the Sandiganbayan—should find inspiration and courage, we should apply the law squarely and without fear or favor. We should have collectively carried the burden of doing justice properly and denied this Petition.

Indeed, mercy and compassion temper justice. However, mercy and compassion should never replace justice. There is injustice when we, as the court of last resort, conveniently rid ourselves of the burden of enforcing the Rule of Law by neglecting to do the kind of rigorous, deliberate, and conscious analysis of the issues raised by the parties. There is injustice when we justify the result we want with ambiguous and unclear standards.

Compassion as an excuse for injustice not only fails us as justices of this court. It also fails us in our own humanity.

ACCORDINGLY, I vote to **DISMISS** the Petition. The Motion to Fix Bail should be treated by the Sandiganbayan as a petition for bail under Rule 114, Section 5 of the Rules of Court.

MARVIC M.V.F. LEONEN
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