G.R. No. 213847 – Juan Ponce Enrile *v.* Sandiganbayan (Third Division) and People of the Philippines.

Promulgated:

July 12, 2016

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SEPARATE CONCURRING OPINION

BRION, *J.*:

I write this **Separate Opinion** to reflect my view and explain my vote on the deliberations of the Court *En Banc* on August 18, 2015 on the issue of the provisional release of petitioner Juan Ponce Enrile from detention. I also explain in this Opinion why I vote to deny the motion for reconsideration filed by the People of the Philippines.

On August 18, 2015, the Court, voting 8-4, granted the petition for *certiorari* filed by Enrile to assail and annul the resolutions dated July 14, 2014 and August 8, 2014 issued by the Sandiganbayan (Third Division) in Case No. SB-14-CRM-0238. The dispositive portion of this decision provides:

> **WHEREFORE**, the Court **GRANTS** the petition for *certiorari*; **ISSUES** the writ of *certiorari* **ANNULING** and **SETTING ASIDE** the Resolutions issued by the Sandiganbayan (Third Division) in Case No. SB-14-CRM-0238 on July 14, 2014 and August 8, 2014; **ORDERS** the **PROVISIONAL RELEASE** of petitioner Juan Ponce Enrile in Case No. SB-14-CRM-0238 upon posting of a cash bond of ₱1,000,000.00 in the Sandiganbayan; and **DIRECTS** the immediate release of petitioner Juan Ponce Enrile from custody unless he is being detained for some other lawful cause.
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> No pronouncement on costs of suit.
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> **SO ORDERED**.

The *People*, through the Office of the Special Prosecutor, moved to reconsider this decision, and claimed that the grant of bail to Enrile "unduly and radically modified constitutional and procedural principles governing bail without sufficient constitutional, legal and jurisprudential basis."[1] It argued that since Enrile was charged with a grave crime punishable by *reclusion perpetua* to death, he cannot be admitted to bail as a matter of right unless it had been determined that evidence of his guilt was not strong.

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[1] Motion for Reconsideration, pp. 3-4.

The *People* further alleged that the *ponencia* erred in granting Enrile provisional liberty on the erroneous premise that the principal purpose of bail is to ensure the appearance of the accused during trial. It maintained that the grant of provisional liberty must be counter-balanced with the legitimate interests of the State to continue placing the accused under preventive detention when circumstances warrant.

The *People* further claimed that there is no obligation on the part of the State to allow Enrile to post bail even under international law since the latter's detention was an incident of a lawful criminal prosecution. It added that age and health are not relevant in the determination of whether the evidence of guilt against Enrile is strong; and that "there is no provision in the 1987 Constitution, in any statute or in the Rules of Court"[2] that allows the grant of bail for humanitarian considerations.

The *People* likewise claimed that its constitutional right to due process had been violated since the Court granted provisional liberty to Enrile based on grounds that were not raised by Enrile in connection with his bail request.

Finally, the *People* alleged that the *ponencia* violated the equal protection clause of the 1987 Constitution when it "gave preferential treatment and undue favor"[3] to Enrile.

My Position:

I reiterate that Enrile should be admitted to bail. I likewise vote to deny the motion for reconsideration filed by the Office of the Special Prosecutor.

The Right to Bail and the Court's Equity Jurisdiction

Our Constitution zealously guards every person's right to life and liberty against unwarranted state intrusion; indeed, no state action is permitted to invade this sacred zone except upon observance of due process of law.

Like the privilege of the writ of *habeas corpus*, the right to bail provides complete substance to the ***guarantee of liberty*** under the Constitution; without it, the right to liberty would not be meaningful, while due process would almost be an empty slogan.[4] A related right is the ***right to be presumed innocent*** from where, the right to bail also draws its strength.

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2 *Id.* at 21.

3 *Id.* at 28.

4 See Separate Opinion of Chief Justice Reynato Puno in *Government of the United States of America v. Hon. Purganan*, 438 Phil. 417, 471 (2002).

Bail is accorded to a person under the custody of the law who, before conviction and *while he enjoys the presumption of innocence*, may be allowed provisional liberty upon the filing of a bond to secure his appearance before any court, as required under specified conditions.[5] State interest is recognized through the submitted bond and by the guarantee that the accused would appear before any court as required under the terms of the bail.

In *Leviste v. Court of Appeals*,[6] the Court explained the nature of bail in the following manner:

> Bail, the security given by an accused who is in the custody of the law for his release to guarantee his appearance before any court as may be required, is the answer of the criminal justice system to a vexing question: what is to be done with the accused, whose guilt has not yet been proven, in the "dubious interval," often years long, between arrest and final adjudication. Bail acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring the accused's presence at trial.

The constitutional mandate is that "[a]ll 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. x x x."[7]

Under this provision, bail is clearly a *demandable constitutional right;* it only ceases to be so recognized when evidence of guilt of the person – charged with a crime that carries the penalty of *reclusion perpetua,* life imprisonment, or death – is found to be strong. From the *perspective of innocence*, this degree of evidence apparently renders less certain the presumption of innocence that the accused enjoys before conviction.

But while bail is separately treated for those charged with a crime that carries the penalty of *reclusion perpetua or higher*, ***the Constitution does not expressly and absolutely prohibit the grant of bail even for the accused who are so charged.***

If the evidence of guilt is *not strong*, as the courts may determine *in their discretion*, then the accused may be demanded still as of right.

If the evidence of guilt, on the other hand, is strong, this preliminary evaluation, made prior to conviction, may *render the presumption of innocence lighter in its effects, but does not totally negate it*; constitutionally, the presumption of innocence that the accused enjoys still exists as only final conviction erases it.

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5 See *Heirs of Delgado v. Gonzales*, 612 Phil. 817 (2009).
6 G.R. No. 189122, March 17, 2010, 615 SCRA 619, 627-628.
7 Article III, Section 13 of the 1987 Constitution.

Hand in hand with these thoughts, I have considered the judicial power that the courts have been granted under the Constitution. This power ***includes*** the duty to settle actual controversies involving rights which are legally demandable and enforceable. It likewise encompasses the protection and enforcement of constitutional rights, through promulgated rules that also cover pleading, practice and procedure.[8]

I hold the view that judicial power, *by its express terms*, is ***inclusive*** rather than exclusive: the specific powers mentioned in the Constitution do not constitute the totality of the judicial power that the Constitution grants the courts. Time and again, the Supreme Court has given this constitutional reality due recognition by acting, not only within the clearly defined parameters of the law, but also within that *penumbral area not definitively defined by the law but not excluded from the Court's authority by the Constitution and the law*.

The Court has particularly recognized its authority to so act if sufficiently compelling reasons exist that would serve the ends of the Constitution – the higher interests of justice, in this case, the protection and recognition of the right to liberty based on the special circumstances of the accused.

A prime example of an *analogous* Court action would be in the case of Leo Echagaray where the Court issued a temporary restraining order (*TRO*) to postpone the execution of Echegaray and asserted its authority to act even in the face of the clear authority of the President to implement the death penalty.

In *Echegaray v. Secretary of Justice*,[9] the public respondents (Secretary of Justice, et al.) questioned the Court's resolution dated January 4, 1999 temporarily restraining the execution of Leo Echegaray and argued, among others, that the decision had already become final and executory, and that the grant of reprieve encroaches into the exclusive authority of the executive department to grant reprieve.

In ruling that it had jurisdiction to issue the disputed TRO, the Court essentially held that an [a]ccused who has been convicted by final judgment still possesses collateral rights and these rights can be claimed in the appropriate courts. We further reasoned out that the powers of the Executive, the Legislative and the Judiciary to save the life of a death convict do not exclude each other for the simple reason that there is no higher right than the right to life. [10]

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8 Article VIII, Section 5(5), Constitution

9 361 Phil. 73 (1999).

10 In his Separate Opinion. Associate Justice (ret.) Jose C. Vitug supported this view, and explained that:

> x x x the authority of the Court to see to the proper execution of its final judgment, the power of the President to grant pardon, commutation or reprieve, and the prerogative of Congress to repeal or modify the law that could benefit the convicted

While *Echegaray* did not involve the right to bail, it nonetheless shows that the Court will not hesitate to invoke its jurisdiction to effectively safeguard constitutional rights and liberties.

In *Secretary of Justice v. Hon. Lantion*,[11] the Court applied what it termed as "rules of fair play" so as not to deny due process to Mark Jimenez during the evaluation process of an extradition proceeding.

In this case, the United States Government requested the Philippine Government for the extradition of Mark Jimenez to the United States. The Secretary of Foreign Affairs forwarded this request to the Department of Justice. Pending the evaluation of the extradition documents by the DOJ, Jimenez requested for copies of the official extradition request and all pertinent documents, and the holding in abeyance of the proceedings.

When the DOJ denied his request for being premature, Jimenez filed an action for mandamus, *certiorari* and prohibition before the Regional Trial Court, Branch 25, Manila. The RTC issued an order directing the Secretary of Justice, the Secretary of Foreign Affairs, and the NBI to maintain the *status quo* by refraining from conducting proceedings in connection with the extradition request of the US Government. The Secretary of Justice questioned the RTC's order before this Court.

In dismissing this petition, the Court ruled that although the Extradition Law does not specifically indicate whether the extradition proceeding is criminal, civil, or a special proceeding, the evaluation process – understood as the extradition proceedings proper – belongs to a class by itself; it is *sui generis*. **The Court thus characterized the evaluation process to be similar to a preliminary investigation in criminal cases** so that certain constitutional rights are available to the prospective extraditee. Accordingly, the Court ordered the Secretary of Justice to furnish Jimenez copies of the extradition request and its supporting papers, and to grant him a reasonable time within which to file his comment with supporting evidence.

The Court explained that although there was a gap in the provisions of the RP-US Extradition Treaty regarding the basic due process rights available to the prospective extradite at the evaluation stage of the proceedings, the prospective extraditee faces the threat of arrest, not only after the extradition petition is filed in court, but even during the evaluation proceeding itself by virtue of the provisional arrest allowed under the treaty and the implementing law. It added that the Rules of Court guarantees the respondent's basic due process rights in a preliminary investigation, granting

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accused are not essentially preclusive of one another nor constitutionally incompatible and may each be exercised within their respective spheres and confines. Thus, the stay of execution issued by the Court would not prevent either the President from exercising his pardoning power or Congress from enacting a measure that may be advantageous to the adjudged offender.

[11] 379 Phil. 165 (2000).

him the right to be furnished a copy of the complaint, the affidavits and other supporting documents, and the right to submit counter-affidavits and other supporting documents, as well as the right to examine all other evidence submitted by the complainant.

While the Court in *Lantion* applied the "rules of fair play" and not its equity jurisdiction, the distinction between the two with respect to this case, to me, is just pure semantics. I note in this case that the Court still recognized Jimenez's right to examine the extradition request and all other pertinent documents pertaining to his extradition despite the gap in the law regarding the right to due process of the person being extradited during the evaluation stage.

Based on these constitutional considerations, on the dictates of equity and the need to serve the higher interest of justice, I believe that it is within the authority of the Court to inquire if the special circumstances the accused submitted are sufficiently compelling reasons for the grant of bail to Enrile.

Equity jurisdiction is used to describe the power of the court to resolve issues presented in a case in accordance with *natural rules of fairness and justice in the absence of a clear, positive law governing the resolution of the issues posed.*[12] Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction. Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.[13]

In *Daan v. Hon. Sandiganbayan (Fourth Division)*,[14] we further expounded on this concept as follows:

> Equity as the complement of legal jurisdiction seeks to reach and do complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent so to do. Equity regards the spirit of and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts.

I am not unaware that courts exercising equity jurisdiction must still apply the law and have no discretion to disregard the law.[15] Equitable principles must always remain subordinate to positive law, and cannot be allowed to subvert it, nor do these principles give to the Courts authority to make it possible to do so.[16] Thus, where the law prescribes a particular remedy with fixed and limited boundaries, the court cannot, by exercising

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12 See Riano, Willard, Civil Procedure (A Restatement for the Bar), 2007, p. 30.

13 See *Reyes v. Lim*, 456 Phil. 1, 10 (2003).

14 573 Phil. 368, 378-379 (2008), citing *Poso v. Judge Mijares*, 436 Phil. 295, 324 (2002).

15 *Arsenal v. IAC*, 227 Phil. 36 (1986).

16 See J.B.L. Reyes, The Trend Toward Equity Versus Positive Law in Philippine Jurisprudence, 58 Phil. L.J. 1, 4).

equity jurisdiction, extend the boundaries further than the law allows.[17] As the Court explained in *Mangahas v. Court of Appeals*:[18]

> For all its conceded merits, equity is available only in the absence of law and not as its replacement. Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. x x x all abstract arguments based only on equity should yield to positive rules, which pre-empt and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force.

Similarly, in *Phil. Rabbit Bus Lines, Inc. v. Judge Arciaga*,[19] the Court held [t]hat there are instances, indeed, in which a court of equity gives a remedy, where the law gives none; but where a particular remedy is given by the law, and that remedy is bounded and circumscribed by particular rules, it would be very improper for the court to take it up where the law leaves it and to extend it further than the law allows.

Where the *libertarian intent* of the Constitution, however, is beyond dispute; where this same Constitution itself does not *substantively* prohibit the grant of provisional liberty even to those charged with crimes punishable with *reclusion perpetua* where evidence of guilt is strong; and where exceptional circumstances are present as compelling reasons for humanitarian considerations, I submit that the Court does not stray from the parameters of judicial power if it uses equitable considerations in resolving a case.

I note in this regard that together with Section 13, Article III of the Constitution which provides that:

> **[a]ll 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. x x x

Section 7 of Rule 114 of the Revised Rules of Court states that no person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment when the evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal action. Thus, seemingly, there exists a law or, to be exact, a remedial rule, that forecloses

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17 *Alvendia v. Intermediate Appellate Court*, G.R. No. 72138, January 22, 1990, 181 SCRA 252.

18 588 Phil. 61 (2008).

19 232 Phil. 400, 405 (1987). See also *Agra v. Philippine National Bank* (368 Phil. 829, 844, [1999]) where the Court declared that:

> "As for equity, which has been aptly described as 'justice outside legality,' this is applied only in the absence of, and never against, statutory law or, as in this case, judicial rules of procedure. *Aequetas nunquam contravenit legis*. This pertinent positive rules being present here, they should pre-empt and prevail over all abstract arguments based only on equity.' x x x"

the grant of bail to an accused who falls within the exception identified under Section 13, Article III of the Constitution.

Rule 114 of the Revised Rules of Court, however, cannot foreclose the exercise by the Court of a discretionary grant of bail because the constitutional provision on bail speaks only of bail as a matter of right and does not prohibit a discretionary grant by the courts, particularly by the Supreme Court which is the fountainhead of all rules of procedure and which can, when called for, suspend the operation of a rule of procedure. In hierarchal terms, the constitutional provision on bail occupies a very much higher plane than a procedural rule.

Notably, Rule 114 directly addresses the grant of a right under the constitutional provision – a situation where no equitable considerations are taken into account. In this situation, the Court's hands are in fact tied as it must comply with the direct command of the Constitution.

But when compelling circumstances exist, as has been described above, the situation cannot but change and shifts into that penumbral area that is not covered by the exact parameters of the express words of the Constitution yet is not excluded by it. In this domain, when compelling reasons exist to carry into effect the intent of the Constitution, equity can come into play.

I reiterate that the fundamental consideration in confining an accused before conviction is to assure his presence at the trial. The denial of bail in capital offense is on the theory that the proof being strong, the defendant would flee, if he has the opportunity, rather than face a verdict in court. Hence, the exception to the fundamental right to be bailed should be applied in direct ratio to the extent of the probability of the evasion of the prosecution.[20]

As the *ponencia* recognized, these circumstances are Enrile's advanced age (91), his state of health (he has been in and out of hospital before and since his arrest, a condition that is not surprising based on his age alone), and the almost nil chance that Enrile would evade arrest.

Dr. Jose C. Gonzales, the Director of the PGH, testified that Enrile underwent clinical and laboratory examinations, as well as pulmonary evaluation and pulmonary function tests on various dates on August 2014, and was found to be suffering from the following conditions:

(1) Chronic Hypertension with fluctuating blood pressure levels on multiple drug theraphy;

(2) Diffuse atherosclerotic cardiovascular disease composed of the following:

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20 Herrera, Oscar M., Remedial Law, vol. IV, 2007 ed., p. 466 (citation omitted).

a. Previous history of cerebrovascular disease with carotid and vertebral artery disease;

b. Heavy coronary artery calcifications;

c. Ankle Brachial Index suggestive of arterial calcifications.

(3) Atrial and ventricular Arrhythmia (irregular heartbeat) documented by Holter monitoring;

(4) Asthma-COPD Overlap Syndrome and postnasal drip syndrome;

(5) Ophthalmology:

a. Age-related macular degeneration, neovascular s/p laser of the Retina, s/p Lucentis intra-ocular injections

b. S/p Cataract surgery with posterior chamber intraocular lens

(6) Historical diagnoses of the following:

a. High blood sugar/diabetes on medications;

b. High cholesterol levels/dyslipidemia;

c. Alpha thalassemia;

d. Gait/balance disorder;

e. Upper gastrointestinal bleeding (etiology uncertain) in 2014;

f. Benign prostatic hypertrophy (with documented enlarged prostate on recent ultrasound).

In his Manifestation and Compliance, Dr. Gonzales further added that "the following medical conditions of Senator Enrile pose a significant risk for life-threatening events": (1) fluctuating hypertension, which may lead to brain or heart complications, including recurrence of stroke; (2) arrhythmias, which may lead to fatal or nonfatal cardiovascular events; (3) diffuse atherosclerotic vascular disease may indicate a high risk for cardiovascular events; (4) exacerbations of asthma-COPD Overlap Syndrome may be triggered by certain circumstances (excessive heat, humidity, dust or allergen exposure) which may cause a deterioration in patients with Asthma or COPD.

During the July 14, 2014 hearing, the witness-cardiologist expounded on the delicate and unpredictable nature of Enrile's arrhythmia under the following exchange with the court:

AJ MARTIRES:

Q: So, the holter monitoring was able to record that the accused is suffering from arrhythmia?

What is arrhythmia, Doctor?

CARDIOLOGIST:

A: Arrhythmia is an irregular heartbeat. We just reviewed the holter of Senator Enrile this morning again, prior to coming here, and we actually identified the following irregularities:

There were episodes of atrial fibrillation, which is a very common arrhythmia in elderly individuals, pre-disposing elderly dangers for stroke;

There were episodes of premature ventricular contractions of PVCs; and episodes of QT tachy cardia.

x x x x

Q: So, what are these different types of arrhythmia?

A: Okay, Senator Enrile actually has three (3) different types of arrhythmia, at least, based on our holter.

One is atrial fibrillation. I would say that it is the most common arrhythmia found in our geriatric patients. It is a very important arrhythmia, because it is a risk factor for stroke, and Senator Enrile actually already has one documentation of previous stroke based on an MRI study.

Second, he has premature ventricular contractions (PVCs). Again, very normal in patients who are in his age group; and

Third, is the atrial tachy cardia, which is another form of atrial fibrillation. He has these three types of irregular heartbeat.

Q: These three types are all dangerous?

A: Yes, your Honor. These arrhythmias are dangerous under stressful conditions. There is no way we can predict when these events occur which can lead to life-threatening events.

x x x x.[21] (Emphasis supplied)

Dr. Gonzales likewise classified Enrile as a patient "under pharmacy medication" owing to the fact that for arrhythmia alone, he is taking the following medications: cilostazol; telmisartan; amlodipine; Coumadin; norvasc; rosuvastin; pantoprazole; metformin; glycoside; centrum silver; nitramine and folic acid.

The records further disclosed that: (1) Enrile has "diabetes mellitus, dyslipidemia, essential hypertension, extensive coronary artery calcification in the right coronary, left anterior descending and left circumflex, multifocal ventricular premature beats, episodes of bradycardia, colonic diverticulosis, thoracic and lumbar spondylosis L4-L5, alpha thalassemia and mucular degeneration, chronic lacunar ischemic zones, scattered small luminal

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[21] TSN, July 14, 2014, pp. 22-24.

plaques of proximal middle segments of basilar artery, both horizontal and insular opercural branches of middle cerebral arteries," and that he takes approximately 20 medicines a day; and (2) Enrile needs to undergo "regular opthlamologic check-up, monitoring and treatment for his sight threatening condition;" and that since 2008, he has been receiving monthly intravitreal injections to maintain and preserve his vision.

Notably, when Dr. Gonzales (PGH Medical Director) was asked during the July 14, 2014 hearing on whether Enrile – based on his observation – was capable of escaping, he replied that Enrile "has a problem with ambulation;" and that "even in sitting down, he needs to be assisted."

Significantly, the use of humanitarian considerations in the grant of bail on the basis of health is not without precedent.

In *Dela Rama v. People*,[22] accused Francisco Dela Rama filed a motion before the People's Court asking for permission to be confined and treated in a hospital while his bail petition was being considered. The People's Court ordered that the Dela Rama be temporarily confined and treated at the Quezon Institute. It also rejected Dela Rama's bail application.

During Dela Rama's stay in the hospital, Dr. Miguel Cañizares of the Quezon Institute submitted a report to the People's Court stating that Dela Rama suffered from a minimal, early, unstable type of pulmonary tuberculosis, and chronic granular pharyngitis. He also recommended that Dela Rama continue his stay in the sanatorium for purposes of proper management, treatment and regular periodic radiographic check-up up of his illness.[23]

Dela Rama re-applied for bail on the grounds of poor health, but the People Court rejected his petition for bail was again rejected. Instead, it ordered that Dela Rama be further treated at the Quezon Institute, and that the Medical Director of the Quezon Institute submit monthly reports on the patient's condition.

Acting on Dela Rama's second petition for *certiorari*, this Court ruled that the People's Court had acted with grave abuse of discretion by refusing to release Dela Rama on bail. It reasoned out as follows:

> The fact that the denial by the People's Court of the petition for bail is accompanied by the above quoted order of confinement of the petitioner in the Quezon Institute for treatment without the letter's consent, does not in any way modify or qualify the denial so as to meet or accomplish the humanitarian purpose or reason underlying the doctrine adopted by modern trend of courts decision which permit bail to prisoners, **irrespective of the nature and merits of the charge against them, if**

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22 77 Phil. 461 (1946).

23 See also http://www.globalhealthrights.org/asia/francisco-c-de-la-rama-v-the-peoples-court/ (last visited on August 15, 2015).

> **their continuous confinement during the pendency of their case would be injurious to their health or endanger their life.**
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> x x x x
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> Considering the report of the Medical Director of the Quezon Institute to the effect that the petitioner "is actually suffering from minimal, early, unstable type of pulmonary tuberculosis, and chronic, granular pharyngitis," and that in said institute they "have seen many similar cases, later progressing into advance stages when treatment and medicine are no longer of any avail;" taking into consideration that the petitioner's previous petition for bail was denied by the People's Court on the ground that the petitioner was suffering from quieseent and not active tuberculosis, and the implied purpose of the People's Court in sending the petitioner to the Quezon Institute for clinical examination and diagnosis of the actual condition of his lungs, was evidently to verify whether the petitioner is suffering from active tuberculosis, in order to act accordingly in deciding his petition for bail; and considering further that the said People's Court has adopted and applied the well-established doctrine cited in our above quoted resolution, in several cases, among them, the cases against Pio Duran (case No. 3324) and Benigno Aquino (case No. 3527), in which the said defendants were released on bail **on the ground that they were ill and their continued confinement in New Bilibid prison would be injurious to their health or endanger their life**; it is evident and we consequently hold that the People's Court acted with grave abuse of discretion in refusing to release the petitioner on bail. (Emphasis ours).

Contrary to what the *People* insinuated in its motion, there has been no Court decision expressly abandoning *Dela Rama*. That the amendments to Rule 114 did not incorporate the pronouncement in *Dela Rama* (that bail may be granted if continued confinement in prison would be injurious to their health or endanger their life) did not *ipso facto* mean that the Court was precluding an accused from citing humanitarian considerations as a ground for bail.

In *United States v. Jones*,[24] the United States Circuit Court held that "[w]here an application for bail showed that the prisoner's health was bad, his complaint pulmonary, and that, in the opinion of his physician, confinement during the summer might so far increase his disorder as to render it ultimately dangerous, x x x [t]he humanity of our laws, not less than the feelings of the court, favor the liberation of a prisoner upon bail under such circumstances." According to the court, it is not necessary that the danger which may arise from his confinement should be either immediate or certain. If, in the opinion of a skillful physician, the nature of his disorder is such that the confinement must be injurious and may be fatal, the prisoner "ought to be bailed."

I also point out that *per* the testimony of Dr. Servillano, the facilities of the PNP General Hospital (where Enrile had been detained) were inadequate to address emergency situations, such as when Enrile's condition

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[24] 3 Wn. (C.C.) 224, Fed. Cas. No. 15,495.

suddenly worsens. Thus, Enrile's continued confinement at this hospital endangered his life.

While it could be argued that Enrile could have been transferred to another, better-equipped, hospital, this move does not guarantee that his health would improve. The dangers associated with a prolonged hospital stay were revealed in court by the government's own doctor, Dr. Gonzales. To directly quote from the records:

> AJ QUIROZ:
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> Q: Being confined in a hospital is also stressful, right?
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> DIRECTOR GONZALES:
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> A: Yes, your Honor, you can also acquire pneumonia, hospital intensive pneumonia, if you get hospital acquired pneumonia, these are bacteria or micro organisms that can hit you, such that we don't usually confine a patient.
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> If it is not really life threatening, such that it is better to have a community acquired pneumonia, because you don't have to use sophisticated antibiotics. But if you have a prolonged hospital stay, definitely, you would get the bacteria in there, which will require a lot of degenerational antibiotics.
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> x x x x[25]

I therefore reiterate, to the point of repetition, that Enrile is already 91- years old, and his immune system is expectedly weak. His body might not adjust anymore to another transfer to a different medical facility.

To be sure, Enrile's medical condition was not totally unknown to the prosecution. To recall, Enrile filed his *Motion for Detention at the PNP General Hospital* and his *Motion to Fix Bail* before the Sandiganbayan on July 4, 2014 and July 7, 2014, respectively. In the former motion, Enrile claimed that that "his advanced age and frail medical condition" merited hospital arrest in the Philippine National Police General Hospital under such conditions that may be prescribed by the Sandiganbayan. He additionally 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. In his motion to fix bail, Enrile argued that his age and voluntary surrender were mitigating and extenuating circumstances. The Office of the Ombudsman filed its Opposition to the Motion to Fix Bail on July 9, 2014; the prosecution also submitted its Opposition to the Motion for Detention at the PNP General Hospital. To be sure, the prosecution had not been kept in the dark as regards the medical condition of Enrile.

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[25] TSN, July 14, 2014, p. 33.

I also submit, on the matter of evasion, that we can take judicial notice that Enrile had been criminally charged in the past and not once did he attempt to evade the jurisdiction of the courts; he submitted himself to judicial jurisdiction and met the cases against him head-on.[26]

The *People*'s insinuation that Enrile has shown "propensity to take exception to the laws and rules that are otherwise applicable to all, perhaps out of a false sense of superiority or entitlement" due to his refusal to enter a plea before the Sandiganbayan; his act of questioning the insufficiency of the details of his indictment; a *motion to fix bail* that he filed instead of a *petition for bail*; and his act of seeking detention in a hospital instead of in a regular facility, were uncalled for. Enrile was well within his right to avail of those remedies or actions since they were not prohibited by the Rules.

We are well aware that Enrile, after posting bail, immediately reported for work in the Senate. This circumstance, however, does not *ipso facto* mean that he is not suffering from the ailments we enumerated above (as found and testified to by the physicians).

To be fair, the majority did not hold that Enrile was so weak and ill that he was incapacitated and unable to perform his duties as Senator; it merely stated that he should be admitted to bail due to his old age and ill health.

Surely, one may be ill, and yet still opt to report for work. We note that Enrile told the media that he reported to work "to earn my pay," adding that, "I will perform my duty for as long as I have an ounce of energy."[27] If Enrile chose to continue reporting for work despite his ailments, that is his prerogative.

Misplaced reliance on the equal protection clause

Contrary to the Ombudsman's claim, the grant of provisional liberty to Enrile did not violate the equal protection clause under the Constitution.

The guarantee of equal protection of the law is a branch of the right to due process embodied in Article III, Section 1 of the Constitution. It is rooted in the same concept of fairness that underlies the due process clause. In its simplest sense, it requires equal treatment, *i.e.*, the absence of discrimination, for all those under the same situation.[28]

In *Biraogo v. Philippine Truth Commission of 2010*,[29] the Court explained this concept as follows:

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[26] See *Enrile v. Salazar*, G.R. No. 92163, June 5, 1990, 186 SCRA 217.

[27] See http://www.gmanetwork.com/news/story/534135/news/nation/out-on-bail-enrile-returns-to-work-at-the-senate (last visited, September 21, 2015).

[28] See Separate Opinion of Justice Brion in *Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 73.

[29] G.R. No. 192935, December 7, 2010, 637 SCRA 78, 167 (citations omitted).

> x x x [E]qual protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. It requires public bodies and institutions to treat similarly situated individuals in a similar manner." "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statue or by its improper execution through the state's duly constituted authorities. In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective.

Hence, any claim of violation of the equal protection clause must convincingly show that there exists a classification that is blatantly arbitrary or capricious, and that there is no rational basis for the differing treatment. **The present motion for reconsideration had not shown that there were other nonagenarian charged with a capital offense who are currently behind bars.**

We note in this regard that Resolution No. 24-4-10 (Re: Amending and Repealing Certain Rules and Sections of the Rules on Parole and Amended Guidelines for Recommending Executive Clemency of the 2006 Revised Manual of the Board of Pardons and Parole) directs the Board to recommend to the President the grant of executive clemency of, among other, **inmates who are seventy (70) years old and above whose continued imprisonment is inimical to their health** as recommended by a physician of the Bureau of Corrections Hospital and certified under oath by a physician designated by the Department of Health. If **convicted persons** (*i.e.,* persons whose guilt have been proven with moral certainty) are allowed to be released on account of their old age and health, then there is no reason why a **mere accused** could not be released on bail based on the same grounds.

The Joint Resolution of the Ombudsman did not show any direct link of Enrile to the so-called PDAF scam

As the *ponente* of another Enrile case, I also made a painstaking cross-reference to the 144-page Joint Resolution of the Office of the Ombudsman dated March 28, 2014 (which became the basis of Enrile's indictment before the Sandiganbayan), but did not see anything there to show that Enrile received kickbacks and/or commissions from Napoles or her representatives.

This Joint Resolution contained an enumeration of the amounts of Special Allotment Release Order (SARO) released by the DBM; the projects and activities; the intended beneficiaries/LGUs; the total projects/activities cost; the implementing agency; the project partners/NGOs; the disbursement vouchers and their respective amounts and dates; the check numbers; the paying agencies/claimant or payee; the signatories of the vouchers; and the signatories of the Memorandum of Agreement (MOA).

Notably, Enrile's signature did not appear in any of the documents listed by the prosecution. The sworn statements of the so-called whistleblowers, namely Benhur Luy, Marina Sula, Merlina Suñas, as well as Ruby Tuason's Counter-Affidavit, also did not state that Enrile personally received money, rebates, kickbacks or commissions. In her affidavit, Tuason also *merely presumed* that whatever Reyes "was doing was with Senator Enrile's blessing" since there were occasions when "Senator Enrile would join us for a cup of coffee when he would pick her up." Luy's records also showed that that the commissions, rebates, or kickbacks amounting to at least ₱172,834,500.00 (the amount alleged in the plunder charge) were received by *either Reyes or Tuason.*

My findings were verified by recent news reports stating that the prosecutors admitted that they had no evidence indicating that Enrile personally received kickbacks from the multi-billion-peso pork barrel scam during the oral summation for the petition to post bail of alleged pork scam mastermind Janet Lim-Napoles before the Sandiganbayan Third Division. These reports also stated that prosecutor Edwin Gomez admitted that the endorsement letters identifying the Napoles-linked foundations as the beneficiaries of Enrile's PDAF were not signed by Enrile (Gomez said six of the endorsement letters were signed by Reyes while the rest were signed by Enrile's other chief of staff, Atty. Jose Antonio Evangelista).[30]

I make it clear that I am not in any way prejudging the case against Enrile before the Sandiganbayan. I am simply pointing out that *based on the records available to* me as the *ponente* of a related Enrile case, there was no showing that Enrile received kickbacks or commissions relating to his PDAF. Whether Enrile conspired with his co-accused is a matter that needs to be threshed out by the Anti-Graft Court.

WHEREFORE, premises considered, I vote to **DENY** the present motion for reconsideration.

ARTURO D. BRION
Associate Justice

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30 http://www.gmanetwork.com/news/story/536830/news/nation/no-proof-enrile-got-kickbacks-from-napoles-prosecution (last visited September 15, 2015); and http://newsinfo.inquirer.net/721987/court-told-no-proof-enrile-got-kickbacks (last visited September 16, 2015).