

## SECOND DIVISION

[ G.R. No. 237703, October 03, 2018 ]

### JOSEPH C. SY, PETITIONER, V. SANDIGANBAYAN (THIRD DIVISION) AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

#### DECISION

##### PERLAS-BERNABE, J.:

Before this Court is a petition for *certiorari*<sup>[1]</sup> seeking to annul the Resolutions dated November 21, 2017,<sup>[2]</sup> December 22, 2017,<sup>[3]</sup> and January 17, 2018<sup>[4]</sup> of the Sandiganbayan (SB) in SB-17-CRM-2081 on the ground of grave abuse of discretion. Pending the resolution of this case, petitioner Joseph C. Sy (Sy) filed a Motion for an Allow Departure Order<sup>[5]</sup> dated April 5, 2018, praying that he be permitted to travel abroad for the period from April 23, 2018 to May 23, 2018.

##### The Facts

On October 13, 2017, an Information<sup>[6]</sup> dated August 17, 2017 was filed before the SB charging Sy, among others, with violation of Section 3 (e) of Republic Act No. 3019. Immediately upon learning of this development, Sy posted a cash bond amounting to P30,000.00 for his provisional liberty, which was approved by the SB on November 7, 2017.<sup>[7]</sup> On even date, the SB issued a Hold Departure Order<sup>[8]</sup> against Sy and his co accused to prevent them from leaving the country.

On November 16, 2017, Sy filed a Motion for an Allow Departure Order<sup>[9]</sup> for the period from November 28 to December 7, 2017 (**Motion A**) to embark on business trips in Hong Kong, Macau, and Xiamen, China. He stated that such travel was necessary for him to personally attend to important business matters that needed his direct and special attention. To secure the SB's permission, he manifested his willingness to post a bond and to report to the SB within five (5) days upon his return from abroad. He likewise attached a copy of his plane ticket,<sup>[10]</sup> indicating the time and place of his departure from and return to Manila, Philippines, as well as the cities he will visit.

The prosecution opposed<sup>[11]</sup> the motion on these grounds: (a) it does not contain any itinerary of travel; (b) it does not indicate the place where Sy would stay; (c) there is no urgency for the desired travel; (d) the probability of flight is great considering that his family name and middle name are Chinese; and (e) he must be amenable at all times to the SB's jurisdiction.<sup>[12]</sup>

In reply, Sy expressed his willingness to post a bond as may be directed, stating that his strong family and commercial ties will compel him to return to the Philippines.<sup>[13]</sup> In particular, he cited his functions as the chairperson of a publicly-listed Philippine corporation, Global Ferronickel Holdings, Inc. (FNI),<sup>[14]</sup> the

committee Chairman for Mining of the Philippine Chamber of Commerce and Industry,<sup>[15]</sup> and the Vice-Chairman of the Philippine International Chamber of Commerce.<sup>[16]</sup> He also submitted a detailed itinerary and hotel bookings for his trip mentioning the places where he would be staying.<sup>[17]</sup>

In a **Resolution**<sup>[18]</sup> **dated November 21, 2017**, the SB denied Motion A, explaining that: (i) Sy failed to show the indispensability of his business trip; (ii) the alleged need for the intended travel cannot outweigh the SB's inherent power to preserve the effectiveness of its jurisdiction over his person; and (iii) business interests and ties do not, by themselves, remove the probability of flight.<sup>[19]</sup>

On December 5, 2017, Sy filed another motion to travel<sup>[20]</sup> this time to Japan and Hong Kong for the period from December 17, 2017 to January 5, 2018 (**Motion B**) to accompany his wife and minor son for a family vacation.<sup>[21]</sup> After hearing, the SB denied the motion in a **Resolution**<sup>[22]</sup> **dated December 22, 2017**, stating that a similar motion was previously denied and there were no new matters to substantially address.<sup>[23]</sup>

On January 8, 2018, Sy filed the third motion to travel,<sup>[24]</sup> this time to Hong Kong and China for the period from January 17 to 31, 2018 (**Motion C**) to attend business meetings. During the hearing, the SB allegedly informed Sy that it conducted a background search on him and doubted his intention to return to the country based on an issue regarding his citizenship.<sup>[25]</sup> After the hearing, the SB denied Motion C in a **Resolution**<sup>[26]</sup> **dated January 17, 2018**, stating that it has continuously denied Sy's pleas to travel abroad and reiterating the same grounds for which it denied Motion A.<sup>[27]</sup> The SB added that it remains unconvinced with Sy's assertions relative to his citizenship.<sup>[28]</sup>

On March 16, 2018, Sy filed the instant *certiorari* petition assailing the SB's three (3) Resolutions, which denied his motions to allow his foreign travels. He argued that: (a) the purposes of his travels were indispensable to his occupation as chairman of a publicly-listed Philippine corporation, as well as his paternal duty to his family; (b) his strong and established business interests and ties in the Philippines negate the probability of flight; (c) his consent to a conditional arraignment effectively preserved the SB's jurisdiction over his person for the duration of the case; (d) his citizenship is confirmed by public records; and (e) the SB acted with undue interest, partiality, and bias when it *motu proprio* gathered evidence extraneous to the submission of the parties and used its own findings as basis to question his intent to return to the country.<sup>[29]</sup> Sy also invoked the Court's ruling in *Cojuangco v. Sandiganbayan*,<sup>[30]</sup> citing several instances wherein the SB allowed the accused therein to travel for business purposes. Sy also submitted his travel history<sup>[31]</sup> from 2014 to 2017 to show that the motions were not contrived for the purpose of absconding.<sup>[32]</sup>

In its Comment,<sup>[33]</sup> the Office of the Special Prosecutor (OSP) insisted that the SB acted within the scope of its jurisdiction when it denied Sy's motions for travel abroad based on reasonable and valid grounds. It also contended that, as disclosed during the hearing on Motion C, a complaint before the National Bureau of Investigation attacking Sy's citizenship is still pending resolution. The OSP further

argued that Sy failed to convince the SB that he is not a flight risk, especially since he acknowledged his strong business connections in China and his Chinese lineage.  
[34]

On April 5, 2018, pending the resolution of the petition, Sy filed before the Court a Motion for an Allow Departure Order<sup>[35]</sup> for the period from April 23, 2018 to May 23, 2018 to attend business meetings with Baiyin International Investment Ltd. in Hong Kong and several places in China.<sup>[36]</sup> He justified the filing of the motion with this Court by vigorously contending that the SB is "bent on the absolute deprivation of [his] right to travel on the same basis set forth in the Assailed Resolutions."<sup>[37]</sup> He reiterated that his business trips are indispensable to the companies he represents because foreign suppliers and buyers prefer to deal exclusively with him due to his experience, reputation, and acumen in business and the years he has spent developing and forging strong ties and relationships. He also stressed that his business interests and ties in the Philippines are well-established to remove the probability of his flight and to ensure his presence when required by the SB.<sup>[38]</sup>

In its Comment<sup>[39]</sup> to the motion, the OSP contended that the motion is already moot because the period of Sy's intended travel had already lapsed.<sup>[40]</sup> At any rate, the OSP vehemently opposed the motion on the grounds that: (a) Sy is a flight risk, which is further highlighted by the uncertainty of his assertion on his citizenship; and (b) there is no urgent necessity for the business trip; and (c) as held by the SB, the alleged need for the intended travel cannot outweigh the SB's inherent power to preserve and maintain the effectiveness of its jurisdiction over Sy's person by making himself available whenever it requires.<sup>[41]</sup>

### **The Issues Before the Court**

The issues before the Court are whether or not: (a) the petition for *certiorari* assailing the SB's denial of Sy's motions for the issuance of allow departure orders should be granted; and (b) the Motion for an Allow Departure Order dated April 5, 2018 filed before the Court should be granted.

### **The Court's Ruling**

#### **I.**

The petition for *certiorari* is partly granted.

Procedurally, Section 4, Rule 65 of the Rules of Court states that a petition for *certiorari* must be filed "not later than sixty (60) days from notice" of the assailed resolution. In this case, Sy received the first assailed Resolution on November 29, 2017<sup>[42]</sup> and the second assailed Resolution on January 9, 2018<sup>[43]</sup> but filed the instant petition only on March 16, 2018 or beyond the sixty (60)-day reglementary period to assail the aforementioned Resolutions. Thus, as the petition was filed out of time in these respects, petitioner cannot validly assail these two (2) SB Resolutions.

On the other hand, records show that the petition was timely filed within sixty (60) days from Sy's receipt<sup>[44]</sup> of the third SB Resolution dated January 17, 2018 which denied Motion C. However, it has been argued that the petition is already moot<sup>[45]</sup> because the travel period for which Sy requested an allow departure order (*i.e.*,

January 17 to 31, 2018) had already lapsed. While the assertion is indeed true, the Court nonetheless deems it proper to take cognizance of this case because it falls under certain exceptions <sup>[46]</sup> to the mootness doctrine. In particular, the issue of whether Sy should be issued an allow departure order is clearly capable of repetition given the frequency of his requests for travel and the likelihood of him making similar requests in the future in view of his personal and professional engagements. Moreover, the Court's resolution in this case would also serve to guide the bar and especially the bench in deciding similar cases wherein they are called upon to rule on whether to issue, upon motion, an allow departure order without unduly restricting an accused's constitutional right to travel. That being said, the Court proceeds to resolve the substantive issues raised in Sy's *certiorari* petition.

The constitutional right to travel is part of liberty, which a citizen cannot be deprived of without due process of law.<sup>[47]</sup> However, this right is not absolute, as it is subject to constitutional, statutory, and inherent limitations.<sup>[48]</sup> One of the inherent limitations is the power of courts to prohibit persons charged with a crime from leaving the country.<sup>[49]</sup> In one case, the Court held that the court's power to prohibit a person admitted to bail from leaving the Philippines is a necessary consequence of the nature and function of a bail bond.<sup>[50]</sup> As a result, a person with a pending criminal case and provisionally released on bail does not have an unrestricted right to travel.<sup>[51]</sup>

In *People v. Uy Tusing*,<sup>[52]</sup> the Court explained that an accused is prohibited from leaving the Philippine jurisdiction "because, otherwise, [the court's] orders and processes would be nugatory; and inasmuch as the jurisdiction of the court from which they issued does not extend beyond that of the Philippines, they would have no binding force outside of said jurisdiction."<sup>[53]</sup> This situation became extant in *Silverio v. Court of Appeals*<sup>[54]</sup> wherein the accused, who was released on bail, went abroad several times without court approval resulting in postponements of the arraignment and scheduled hearings. In ruling that the trial court correctly directed the Commission on Immigration to prevent the accused from leaving the country again, the Court pronounced thus:

Petitioner x x x has posted bail but has violated the conditions thereof by failing to appear before the [c]ourt when required. Warrants for his arrest have been issued. Those orders and processes would be rendered nugatory if an accused were to be allowed to leave or to remain, at his pleasure, outside the territorial confines of the country. **Holding an accused in a criminal case within the reach of the [c]ourts by preventing his departure from the Philippines must be considered as a valid restriction on his right to travel so that he may be dealt with in accordance with law.** The offended party in any criminal proceeding is the People of the Philippines. It is to their best interest that criminal prosecution should run their course and proceed to finality without undue delay, with an accused holding himself amenable at all times to [c]ourt [o]rders and processes.<sup>[55]</sup> (Emphasis supplied)

Verily, the purpose of the restriction on an accused's right to travel is to ensure that courts can effectively exercise their jurisdiction over such person.<sup>[56]</sup> As such, courts are authorized to issue hold departure orders against the accused in criminal

cases, and accordingly, the court's permission is required before an accused can travel abroad.<sup>[57]</sup>

In this case, the SB issued a hold departure order restricting Sy's right to travel abroad. Respecting such order, he filed motions to be allowed to travel abroad for business and personal errands, but all of his motions were denied by the SB. The question now before the Court is **whether the SB gravely abused its discretion amounting to lack or excess of jurisdiction when it denied Sy's request to be allowed to travel abroad.**

Grave abuse of discretion refers to such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction, as when the act amounts to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law.<sup>[58]</sup>

Indeed, whether the accused should be permitted to leave the jurisdiction is a matter addressed to the court's sound discretion.<sup>[59]</sup> Nevertheless, such discretion must not be arbitrarily exercised. **In deciding the matter, the court must delicately balance, on the one hand, the right of the accused to the presumption of his innocence and the exercise of his fundamental rights, and on the other hand, the interest of the State to ensure that the accused will be ready to serve or suffer the penalty should he be eventually found liable for the crime charged.**<sup>[60]</sup>

Based on this premise, the Court finds that the SB committed grave abuse of discretion when it denied Sy's third request to travel abroad on the grounds that he failed to "show the indispensability of the business travel," that his "business interests and ties do not, by themselves, remove the probability of flight," and that the SB remains unconvinced with Sy's assertions relative to his citizenship.<sup>[61]</sup>

***While an accused requesting for permission to travel abroad has the burden to show the need for his travel,***<sup>[62]</sup> ***such permission must not be unduly withheld if it is sufficiently shown that allowing his travel would not deprive the court of its exercise of jurisdiction over his person,*** as in this case. In making such assessment, courts should act judiciously, and thus, base their findings on **concrete variables**, such as the purpose of the travel, the need for similar travels before the criminal case was instituted, the ties of the accused in the Philippines, as well as in the destination country, the availability of extradition, the accused's reputation, his travel itinerary including confirmed tickets to return to the Philippines, the possibility of reporting to the Philippine embassy in the foreign country, and other similar factors. While said requests should be resolved on a case-to case basis, it may not be amiss to state that courts should always be mindful that an accused is afforded the constitutional presumption of innocence,<sup>[63]</sup> and hence, entitled to the entire gamut of his rights, subject only to reasonable restrictions that are based on concrete facts, and not mere speculation.

In this case, a perusal of Sy's travel records<sup>[64]</sup> for the period 2014 to 2017 from the Bureau of Immigration reveals that he frequently travelled to and from the Philippines even before the filing of the criminal case. This supports his contention that his requested travels were not contrived for him to abscond from criminal prosecution. Moreover, contrary to the prosecution's stance, Sy's Chinese-sounding surname and middle name do not serve to increase the probability of his flight but,