

EN BANC

[G.R. No. 148468, January 28, 2003]

**ATTY. EDWARD SERAPIO, PETITIONER, VS. SANDIGANBAYAN
(THIRD DIVISION), PEOPLE OF THE PHILIPPINES, AND
PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL LEANDRO
MENDOZA, RESPONDENTS.**

[G.R. NO. 148769]

**EDWARD S. SERAPIO, PETITIONER, VS. HONORABLE
SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

[G.R. NO. 149116]

**EDWARD S. SERAPIO, PETITIONER, VS. HONORABLE
SANDIGANBAYAN (THIRD DIVISION) AND PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before the Court are two petitions for certiorari filed by petitioner Edward Serapio, assailing the resolutions of the Third Division of the Sandiganbayan denying his petition for bail, motion for a reinvestigation and motion to quash, and a petition for *habeas corpus*, all in relation to Criminal Case No. 26558 for plunder wherein petitioner is one of the accused together with former President Joseph E. Estrada, Jose "Jinggoy" P. Estrada and several others.

The records show that petitioner was a member of the Board of Trustees and the Legal Counsel of the Erap Muslim Youth Foundation, a non-stock, non-profit foundation established in February 2000 ostensibly for the purpose of providing educational opportunities for the poor and underprivileged but deserving Muslim youth and students, and support to research and advance studies of young Muslim educators and scientists.

Sometime in April 2000, petitioner, as trustee of the Foundation, received on its behalf a donation in the amount of Two Hundred Million Pesos (P200 Million) from Ilocos Sur Governor Luis "Chavit" Singson through the latter's assistant Mrs. Yolanda Ricaforte. Petitioner received the donation and turned over the said amount to the Foundation's treasurer who later deposited it in the Foundation's account with the Equitable PCI Bank.

In the latter part of the year 2000, Gov. Singson publicly accused then President Joseph E. Estrada and his cohorts of engaging in several illegal activities, including

its operation on the illegal numbers game known as *jueteng*. This triggered the filing with the Office of the Ombudsman of several criminal complaints against Joseph Estrada, Jinggoy Estrada and petitioner, together with other persons. Among such complaints were: *Volunteers Against Crime and Corruption, versus Joseph Ejercito Estrada, Edward Serapio, et al.*, docketed as OMB Crim. Case No. 0-00-1754; *Graft Free Philippines Foundation, Inc., versus Joseph Ejercito Estrada, Edward Serapio, et al.*, docketed as OMB Crim. Case No. 0-00-1755; and *Leonardo De Vera, Romeo T. Capulong and Dennis B. Funa, versus Joseph Estrada, Yolanda Ricaforte, Edward Serapio, Raul De Guzman, Danilo Reyes and Mila Reforma*, docketed as OMB Crim. Case No. 0-00-1757.

Subsequently, petitioner filed his Counter-Affidavit dated February 21, 2001. The other respondents likewise filed their respective counter-affidavits. The Office of the Ombudsman conducted a preliminary investigation of the complaints and on April 4, 2001, issued a joint resolution recommending, *inter alia*, that Joseph Estrada, petitioner and several others be charged with the criminal offense of plunder.

On April 4, 2001, the Ombudsman filed with the Sandiganbayan several Informations against former President Estrada, who earlier had resigned from his post as President of the Republic of the Philippines. One of these Informations, docketed as Criminal Case No. 26558, charged Joseph Estrada with plunder. On April 18, 2001, the Ombudsman filed an amended Information in said case charging Estrada and several co-accused, including petitioner, with said crime. No bail was recommended for the provisional release of all the accused, including petitioner. The case was raffled to a special division which was subsequently created by the Supreme Court. The amended Information reads:

"That during the period from June, 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, **THEN A PUBLIC OFFICER, BEING THEN THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES,** by himself **AND/OR** in **CONNIVANCE/CONSPIRACY with his co-accused, WHO ARE MEMBERS OF HIS FAMILY, RELATIVES BY AFFINITY OR CONSANGUINITY, BUSINESS ASSOCIATES, SUBORDINATES AND/OR OTHER PERSONS, BY TAKING UNDUE ADVANTAGE OF HIS OFFICIAL POSITION, AUTHORITY, RELATIONSHIP, CONNECTION OR INFLUENCE,** did then and there wilfully, unlawfully and criminally amass, accumulate and acquire **BY HIMSELF, DIRECTLY OR INDIRECTLY,** ill-gotten wealth in the aggregate amount **OR TOTAL VALUE** of **FOUR BILLION NINETY SEVEN MILLION EIGHT HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS** [P4,097,804,173.17], more or less, **THEREBY UNJUSTLY ENRICHING HIMSELF OR THEMSELVES AT THE EXPENSE AND TO THE DAMAGE OF THE FILIPINO PEOPLE AND THE REPUBLIC OF THE PHILIPPINES,** through **ANY OR A** combination **OR A** series of overt OR criminal acts, **OR SIMILAR SCHEMES OR MEANS,** described as follows:

- (a) by receiving **OR** collecting, directly or indirectly, on **SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (P545,000,000.00), MORE OR LESS, FROM**

ILLEGAL GAMBLING IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connivance with co-accused CHARLIE 'ATONG' ANG, Jose 'Jinggoy' Estrada, Yolanda T. Ricaforte, Edward Serapio, **AND JOHN DOES AND JANE DOES,** in consideration **OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;**

- (b) by **DIVERTING, RECEIVING,** misappropriating, converting **OR** misusing **DIRECTLY OR INDIRECTLY,** for **HIS OR THEIR PERSONAL** gain and benefit public fund in the amount of ONE HUNDRED THIRTY MILLION PESOS (P130,000,000.00), more or less, representing a portion of the **TWO HUNDRED MILLION PESOS [P200,000,000.00]** tobacco excise tax share allocated for the Province of Ilocos Sur under R.A. No. 7171, **BY HIMSELF AND/OR** in **CONNIVANCE** with co-accused Charlie 'Atong' Ang, Alma Alfaro, **JOHN DOE a.k.a.** Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a. Delia Rajas, **AND OTHER JOHN DOES AND JANE DOES;**
- (c) by directing, ordering and compelling **FOR HIS PERSONAL GAIN AND BENEFIT,** the Government Service Insurance System (GSIS) **TO PURCHASE, 351,878,000 SHARES OF STOCKS, MORE OR LESS,** and the Social Security System (SSS), **329,855,000 SHARES OF STOCK, MORE OR LESS, OF THE BELLE CORPORATION IN THE AMOUNT OF MORE OR LESS ONE BILLION ONE HUNDRED TWO MILLION NINE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED SEVEN PESOS AND FIFTY CENTAVOS [P1,102,965,607.50]** AND MORE OR LESS SEVEN HUNDRED FORTY FOUR MILLION SIX HUNDRED TWELVE THOUSAND AND FOUR HUNDRED FIFTY PESOS [P744,612,450.00], **RESPECTIVELY,** OR A TOTAL OR MORE OR LESS ONE BILLION EIGHT HUNDRED FORTY SEVEN MILLION FIVE HUNDRED SEVENTY EIGHT THOUSAND FIFTY SEVEN PESOS AND FIFTY CENTAVOS [P1,847,578,057.50]; AND BY COLLECTING OR RECEIVING, **DIRECTLY OR INDIRECTLY, BY HIMSELF AND/OR IN CONNIVANCE WITH JOHN DOES AND JANE DOES, COMMISSIONS OR PERCENTAGES OF SHARES OF STOCK IN THE AMOUNT OF ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND PESOS [189,700,000.00] MORE OR LESS, FROM THE BELLE CORPORATION WHICH**

**BECAME PART OF THE DEPOSIT IN THE
EQUITABLE-PCI BANK UNDER THE ACCOUNT
NAME "JOSE VELARDE";**

- (d) by unjustly enriching himself **FROM COMMISSIONS, GIFTS, SHARES, PERCENTAGES, KICKBACKS, OR ANY FORM OF PECUNIARY BENEFITS, IN CONNIVANCE WITH JOHN DOES AND JANE DOES,** the amount of **MORE OR LESS** THREE BILLION TWO HUNDRED THIRTY THREE MILLION ONE HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS [P3,233,104,173.17] **AND DEPOSITING THE SAME UNDER HIS ACCOUNT NAME "JOSE VELARDE" AT THE EQUITABLE-PCI BANK.**

CONTRARY TO LAW."^[1]

On April 5, 2001, petitioner obtained a copy of the Ombudsman's Joint Resolution finding probable cause against him for plunder. The next day, April 6, 2001, he filed with the Office of the Ombudsman a Motion for Reconsideration and/or Reinvestigation.^[2] Petitioner likewise filed on said date, this time with the Sandiganbayan, an Urgent Omnibus Motion: (a) To Hold in Abeyance the Issuance of Warrant of Arrest and Further Proceedings; (b) To Conduct a Determination of Probable Cause; (c) For Leave to File Accused's Motion for Reconsideration and/or Reinvestigation; and (d) To Direct the Ombudsman to Conduct a Reinvestigation of the Charges against accused Edward Serapio.^[3]

On April 10, 2001, the Ombudsman issued an order denying petitioner's motion for reconsideration and/or reinvestigation on the ground of lack of jurisdiction since the amended Information charging petitioner with plunder had already been filed with the Sandiganbayan.^[4]

In a parallel development, the Sandiganbayan issued a Resolution on April 25, 2001 in Criminal Case No. 26558 finding probable cause to justify the issuance of warrants of arrest for the accused, including petitioner. Accordingly, the Sandiganbayan issued an Order on the same date for the arrest of petitioner.^[5] When apprised of said order, petitioner voluntarily surrendered at 9:45 p.m. on the same day to Philippine National Police Chief Gen. Leandro Mendoza. Petitioner has since been detained at Camp Crame for said charge.

The Sandiganbayan set the arraignment of the accused, including petitioner, in Criminal Case No. 26558 on June 27, 2001. In the meantime, on April 27, 2001, petitioner filed with the Sandiganbayan an Urgent Petition for Bail which was set for hearing on May 4, 2001.^[6] For his part, petitioner's co-accused Jose "Jinggoy" Estrada filed on April 20, 2001 a Very Urgent Omnibus Motion alleging that he was entitled to bail as a matter of right.

During the hearing on May 4, 2001 on petitioner's Urgent Petition for Bail, the prosecution moved for the resetting of the arraignment of the accused earlier than the June 27, 2001 schedule. However, the Sandiganbayan denied the motion of the

prosecution and issued an order declaring that the petition for bail can and should be heard before petitioner's arraignment on June 27, 2001 and even before the other accused in Criminal Case No. 26558 filed their respective petitions for bail. Accordingly, the Sandiganbayan set the hearing for the reception of evidence on petitioner's petition for bail on May 21 to 25, 2001.

On May 17, 2001, four days before the hearing on petitioner's petition for bail, the Ombudsman filed an urgent motion for early arraignment of Joseph Estrada, Jinggoy Estrada and petitioner and a motion for joint bail hearings of Joseph Estrada, Jinggoy Estrada and petitioner. The following day, petitioner filed a manifestation questioning the propriety of including Joseph Estrada and Jinggoy Estrada in the hearing on his (petitioner's) petition for bail.

The Sandiganbayan issued a Resolution on May 18, 2001 resetting the hearings on petitioner's petition for bail to June 18 to 28, 2001 to enable the court to resolve the prosecution's pending motions as well as petitioner's motion that his petition for bail be heard as early as possible, which motion the prosecution opposed.

On May 31, 2001, the Sandiganbayan issued a Resolution denying petitioner's April 6, 2001 Urgent Omnibus Motion. The court ruled that the issues posed by petitioner had already been resolved in its April 25, 2001 Resolution finding probable cause to hold petitioner and his co-accused for trial.^[7] Petitioner filed a motion for reconsideration of the said May 31, 2001 Resolution.

On June 1, 2001, the Sandiganbayan issued a resolution requiring the attendance of petitioner as well as all the other accused in Criminal Case No. 26558 during the hearings on the petitions for bail under pain of waiver of cross-examination. The Sandiganbayan, citing its inherent powers to proceed with the trial of the case in the manner it determines best conducive to orderly proceedings and speedy termination of the case, directed the other accused to participate in the said bail hearing considering that under Section 8, Rule 114 of the Revised Rules of Court, whatever evidence is adduced during the bail hearing shall be considered automatically reproduced at the trial.^[8]

However, instead of proceeding with the bail hearing set by it on June 18, 2001, the Sandiganbayan issued an Order on June 15, 2001 canceling the said bail hearing due to pending incidents yet to be resolved and reset anew the hearing to June 26, 2001.^[9]

On the eve of said hearing, the Sandiganbayan issued a resolution denying petitioner's motion for reconsideration of its May 31, 2001 Resolution. The bail hearing on June 26, 2001 did not again proceed because on said date petitioner filed with the Sandiganbayan a motion to quash the amended Information on the grounds that as against him, the amended Information does not allege a combination or series of overt or criminal acts constitutive of plunder; as against him, the amended Information does not allege a pattern of criminal acts indicative of an overall unlawful scheme or conspiracy; the money alleged in paragraph (a) of the amended Information to have been illegally received or collected does not constitute "ill-gotten wealth" as defined in Section 1(d) of Republic Act No. 7080; and the amended Information charges him of bribery and illegal gambling.^[10] By way of riposte, the prosecution objected to the holding of bail hearing until