



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **December 7, 2022** which reads as follows:*

“G.R. No. 258928 (People of the Philippines v. Joseph Felix Mari H. Durano,* Eduardo A. Jarque, Jr., Oscar P. Palabyab, Grace R. Yoro, Evelyn R. Cajigal and Adriana M. Flor). — Before delving into the merits of the case, this Court:

1. **NOTES** and **GRANTS** the **ENTRY OF APPEARANCE** dated August 5, 2022 of Atty. Maria Cristina B. Garcia-Ramirez of Gana Atienza Avisado Law Offices as counsel for accused-appellant Joseph Felix Mari Hotchkiss Durano, with prayer that all Court’s processes relative to the instant case be also sent at 2nd and 3rd Floors, HPL Building No. 60 Sen. Gil Puyat Avenue, Makati City;

2. **GRANTS** the **MOTION FOR ADDITIONAL TIME (To File Appellant’s Brief)** by counsel for accused-appellants Oscar Palabyab, Grace Yoro, Evelyn Cajigal, and Adriana Flor for thirty (30) days from September 29, 2022 within which to file appellant’s brief;

3. **GRANTS** the motion of the Office of the Special Prosecutor (OSP) for extension of thirty (30) days from receipt of accused-appellants’ brief within which to file appellee’s brief, **WITH WARNING THAT THE SAME SHALL BE THE LAST AND NO FURTHER EXTENSION** will be given;

4. **NOTES** the formal entry of appearance as collaborating counsel (for accused-appellant Eduardo Alvarez Jarque, Jr.) dated October 17, 2022 of Atty. Ickey Rod T. Agadier of AAA Law, and **GRANTS** counsel’s prayer that all Court processes be also sent at Unit 211, A. Geson Bldg., D. Jakosalem St., Zapatera, Cebu City;

5. **NOTES** (a) the appellant’s brief dated October 25, 2022 for accused-appellant Joseph Felix Mari Hotchkiss Durano; and (b) the

* Also referred to as Joseph H. Durano in some parts of the *rollo*.

appellants' brief (for appellants Oscar P. Palabyab, Grace R. Yoro, Evelyn R. Cajigal, and Adriana M. Flor) dated October 28, 2022, both in compliance with the Resolution dated July 6, 2022;

6. **GRANTS** the first motion of accused-appellants Joseph Felix Mari H. Durano and Eduardo A. Jarque, Jr. for extension of thirty (30) days from October 27, 2022 within which to file appellant's brief; and

7. **AWAIT** the respective briefs of accused-appellant Jarque, Jr. and the OSP for plaintiff-appellee.

Accused-Appellant Eduardo Alvarez Jarque, Jr. (*Jarque, Jr.*) likewise filed an Urgent Motion to Travel Abroad,¹ seeking permission to travel to Dubai from January 15 to 24, 2023. In said Motion, Jarque, Jr. attached his electronic ticket,² his reservation to the hotel³ where he will stay while in Dubai, and a special power of attorney⁴ authorizing Atty. Ickey Rod T. Agadier, Atty. Reynaldo A. Acosta, Atty. Queenie Chariz D. Malicay, or Atty. Zharie N. Fernandez as his attorneys in fact for them to act in his stead on any matter pertaining to his case.

Jarque, Jr. along with his co-accused, Joseph Felix Mari H. Durano, Oscar Palabyab, Grace Yoro, Evelyn Cajigal and Adriana Flor, were convicted by the *Sandiganbayan* for violating Section 3(e) of Republic Act No. 3019 and were sentenced to suffer the indeterminate penalty of imprisonment of six years and one month as minimum, to 10 years, as maximum, with the accessory penalty of perpetual disqualification from holding any public office.⁵ Records indicate that upon the filing of the case against the accused before the *Sandiganbayan*, a Hold Departure Order⁶ was issued against them. Nonetheless, upon motion, Jarque, Jr. was allowed by the *Sandiganbayan* to travel during the pendency of the case, on January 14 to 18, 2020⁷ and March 19, 2020 to April 1, 2020.⁸

In *Sy v. Sandiganbayan, et al.*,⁹ this Court explained the parameters concerning the departure of an accused during the pendency of a case without unduly restricting an accused's constitutional right to travel, thus:

¹ *Rollo*, pp. 257-264. Dated October 24, 2022.

² *Id.* at 265.

³ *Id.* at 266-267.

⁴ *Id.* at 269.

⁵ *Id.* at 17-73. The November 26, 2021 Decision was penned by Associate Justice Georgina D. Hidalgo, concurred in by Associate Justices Ma. Theresa Dolores C. Gomez-Estoesta and Karl B. Miranda, Seventh Division. Sandiganbayan, Quezon City.

⁶ Records, vol. 1, pp. 473-474. The Hold Departure Order was issued against them on April 22, 2019.

⁷ Records, vol. 3, pp. 12-13.

⁸ *Id.* at 71-72.

⁹ 841 Phil. 475 (2018) [Per J. Perlas-Bernabe, Second Division].

The constitutional right to travel is part of liberty, which a citizen cannot be deprived of without due process of law. However, this right is not absolute, as it is subject to constitutional, statutory, and inherent limitations. One of the inherent limitations is the power of courts to prohibit persons charged with a crime from leaving the country. 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. As a result, a person with a pending criminal case and provisionally released on bail does not have an unrestricted right to travel.

....

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. 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.

....

Indeed, whether the accused should be permitted to leave the jurisdiction is a matter addressed to the court's sound discretion. 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.**

....

*While an accused requesting for permission to travel abroad has the burden to show the need for his travel, 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, 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.¹⁰ (Emphasis in the original; citations omitted)*

In this case, Jarque, Jr. was allowed to travel by the *Sandiganbayan* during the pendency of the case on several occasions, and has satisfactorily complied with the requirements set forth by the court. He has submitted documents pertaining to his travel to Dubai and back to the Philippines, and

¹⁰ *Id.* at 484-488.

established his business interest in the Philippines, as well as the nature of his work, from which his intention to return to the Philippines can be deduced. Further, he does not appear to be a flight risk, considering that he continues to actively participate in the defense of his case, and there is no reason for him not to return to the country where his family and his substantial business interests are located.

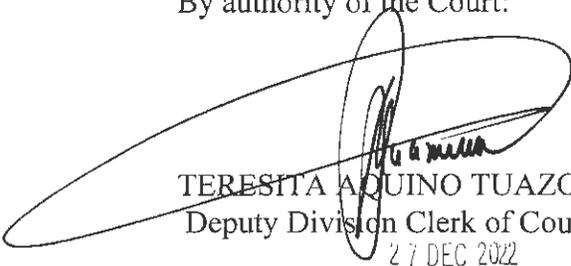
In view of the foregoing, this Court resolves to grant the *Urgent Motion to Travel Abroad* filed by accused-appellant Eduardo Alvarez Jarque, Jr. subject to the following conditions:

- (1) The travel period shall be from January 15 to 24, 2023, inclusive, subject only to extension as may be granted by the Court upon meritorious grounds;
- (2) Accused-appellant Eduardo A. Jarque, Jr. must post a travel bond in the total amount of PHP 300,000.00, conditioned upon his compliance with all the conditions herein prescribed, and shall be in addition to the existing bail justifying his provisional liberty;
- (3) Accused-appellant Eduardo A. Jarque, Jr. shall submit a detailed flight and travel itinerary; and
- (4) Accused-appellant Eduardo A. Jarque, Jr. shall advise the Court in writing of his return to the country within 24 hours after arrival.

FOR THESE REASONS, accused-appellant Eduardo Alvarez Jarque, Jr.'s Urgent Motion to Travel Abroad is **GRANTED**. He is hereby **AUTHORIZED** to travel to Dubai from January 15 to 24, 2023 subject to the conditions stated hereinabove.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court
27 DEC 2022

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OFFICE OF THE CHIEF ATTORNEY (x)
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Supreme Court, Manila

Please notify the Court of any change in your address.

GR258928. 12/7/2022B(507, 571 & 672)URES *12/7/22*