ORIGINAL

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

_____ *Division*

RAMON "BONG" B. REVILLA,JR.
Petitioner,

- versus -

SANDIGANBAYAN, FIRST DIVISION, and PEOPLE OF THE PHILIPPINES,
Respondents.

G.R. No. _____
(SB-14-CRM-0240)
For: Certiorari under Rule 65 of the Rules of Court

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PETITION

Petitioner RAMON "BONG" B. REVILLA, JR. (the "petitioner"), by counsel, respectfully states:

Prefatory

In the words of then Chief Justice Roberto Concepcion:

> "[I]ndividual freedom is too basic, too transcendental and vital in a republican state, like ours, to be deprived upon mere general principles and abstract consideration of public safety. Indeed, the preservation of liberty is such a major preoccupation of our political system that, not satisfied with guaranteeing its enjoyment in the very first paragraph of section (1) of the Bill of Rights, the framers of our Constitution devoted paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (18), and (21) of said section (1) to the protection of several aspects of freedom."[1]

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[1] People v. Hernandez, et al., 99 Phil. 515 (1956), cited in People v. Hon. Donato, et al., G.R. No. 79269, 5 June 1991.

This was the ruling of this Honorable Court in the case of *People v. Hernandez, et al.*[2] in granting bail to an accused during the pendency of his appeal from a conviction sentencing him to life imprisonment.

Guided by the above jurisprudential edict, petitioner invokes the authority of this Honorable Court to rectify a serious abuse of discretion and error, in both fact and law, committed by public respondent Sandiganbayan, First Division (the "Sandiganbayan"), which resulted in the unwarranted and erroneous denial of his bail application. As will be shown below, the Sandiganbayan gravely abused its discretion in denying petitioner's application for bail, despite the fact that the evidence on record is inadmissible and hearsay in character, thus exposing that the evidence of herein petitioner's guilt is not strong, in contravention of this Honorable Court's ruling in *Alerio, Jr. v. Velez*,[3] to wit:

> The grant or denial of bail in capital offenses hinges on the issue of whether or not the evidence of guilt of the accused is strong. Hence the need for the trial court to conduct bail hearings wherein both the prosecution and defense are afforded sufficient opportunity to present their respective evidence. ***The determination, however, of whether or not the evidence of guilt is strong, being a matter of judicial discretion, remains with the judge. To be sure, the discretion of the trial court "is not absolute nor beyond control. It must be sound, and exercised within reasonable bounds.*** Judicial discretion, by its very nature involves the exercise of the judge's individual opinion and the law has wisely provided that its exercise be guided by well-known rules which, while allowing the judge rational latitude for the operation of his own individual views, prevent them from getting out of control. In other words, ***judicial discretion is not unbridled but must be supported by a finding of the facts relied upon to form an opinion on the issue before the court.***[4]

While the Sandiganbayan is never deprived of its mandated prerogative to exercise judicial discretion, this Honorable Court held that it would unhesitatingly reverse the trial court's findings if found to be laced with grave abuse of discretion, as in this case.[5]

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[2] *Id.*

[3] G.R. No. 127400, 16 November 1998.

[4] *Id.*; emphasis supplied.

[5] People v. Cabral, G.R. No. 131909, 18 February 1999.

Furthermore, the Sandiganbayan grossly misapplied basic principles of criminal law and the rules of evidence,[6] specifically in using the "totality of evidence" standard in its general and sweeping finding of conspiracy among petitioner and his co-accused in SB-14-CRM-0240, entitled *"People v. Revilla, et al.,"* thereby masking and disregarding the specific and glaring facts established by the State's own evidence, which negate the finding, by clear, strong, convincing and categorical evidence, of petitioner's involvement or participation in the alleged conspiracy. For as opined by former Justice Angelina Sandoval-Gutierrez in *Serapio v. Sandigabayan:*[7]

> ***Let it be stressed that guilt should remain individual and personal, even as respect conspiracies. It is not a matter of mass application.*** There are times when of necessity, because of the nature and scope of a particular federation, large numbers of persons taking part must be tried by their conduct. The proceeding calls for the use of every safeguard to individualize each accused in relation to the mass. Criminal they may be, but it is not the criminality of mass conspiracy. They do not invite mass trial by their conduct. True, this may be inconvenient for the prosecution. But the government is not one of mere convenience or efficiency. It too has a stake with every citizen, in his being afforded the individual protections, including those surrounding criminal trials. ***The shot-gun approach of a conspiracy charge could amount to a prosecution for general criminality resulting in a finding of guilt by association. The courts should, at all times, guard against this possibility so that the constitutional rights of an individual are not curbed or clouded by the web of circumstances involved in a conspiracy charge.***[8]

Parties

1. Petitioner is a duly elected and incumbent Senator of the Republic of the Philippines, with office address at the 5th Floor, GSIS Bldg., Financial Center, Roxas Blvd., Pasay City. He may be served notices, orders, and the judgment of this Honorable Court in this case through undersigned counsel, at 4th and 5th Floors, S & L Building, Dela Rosa cor. Esteban Streets, Legaspi Village, Makati City.

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[6] *Id.*

[7] J. Sandoval-Gutierrez, Dissenting Opinion, G.R. No. 148769, 28 January 2003.

[8] Emphasis supplied.

2. The Sandiganbayan is a statutorily-created[9] court with office address at Commonwealth Ave., Quezon City, where it may be served notices, resolutions and other papers in this case. It may also be served notices, resolutions and other processes in this case through the Office of the Solicitor General, at 134 Amorsolo St., Legaspi Village, Makati City.

3. Respondent People of the Philippines (the "State") is a sovereign political entity represented by the Office of the Solicitor General, with address at 134 Amorsolo Street, Legaspi Village, Makati City.

Nature and Timeliness of the Petition

4. This is a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure (the "Rules of Court"), seeking the reversal and setting aside of the Sandiganbayan's Resolutions dated 1 December 2014[10] and 26 March 2015[11] (the "Resolutions") in SB-14-CRM-0240, entitled *"People of the Philippines v. Ramon 'Bong' Revilla, Jr., et al.,"* which denied petitioner's "Petition for Bail *Ad Cautelam*" dated 20 June 2014 (the "Petition for Bail"). Petitioner received a copy of the assailed Resolution dated 1 December 2014 on 2 December 2014. Thus, on 17 December 2014, petitioner timely filed his "Omnibus Motion: (1) For the Reconsideration [of the Resolution dated 1 December 2014]; and (2) To Adduce Additional Evidence" dated 17 December 2014 (the "Omnibus Motion"). However, the Sandiganbayan denied petitioner's Omnibus Motion in its assailed Resolution dated 26 March 2015, a copy of which petitioner obtained on 10 April 2015. Accordingly, petitioner has sixty (60) days from 10 April 2015, or until 9 June 2015, within which to assail the Resolutions of the Sandiganbayan before this Honorable Court. Thus, this petition is filed within the reglementary period provided under Rule 65 of the Rules of Court.

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[9] *See* Republic Act No. 8249, otherwise known as "An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes."

[10] A certified true copy of which is attached as Annex "A" hereof.

[11] A certified true copy of which is attached as Annex "B" hereof.

5. Petitioner questions the Sandiganbayan's Resolutions for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Other than this petition, there is no appeal, or any other plain, speedy and adequate remedy in the ordinary course of law by which petitioner may seek relief therefrom.

Statement of Facts and of the Case

6. Sometime in early 2013, self-styled "whistleblowers" led by Benhur K. Luy ("Luy") revealed the *modus* behind the supposed channeling of lawmakers' Priority Development Assistance Fund (PDAF) to allegedly bogus non-governmental organizations (NGO) controlled by Janet Lim Napoles ("Napoles"), or the so-called "PDAF scam."

7. The PDAF scam was allegedly initiated by the lawmakers' purported designation or endorsement of Napoles' NGOs, which in turn became the recipients of the lawmakers' PDAF allocations for the purpose of implementing projects authorized under the Department of Budget and Management (DBM) Project Menu. Upon investigation, it appeared that these projects did not fully materialize, so that the PDAF funds allocated therefor were allegedly misappropriated and converted to the personal use of the lawmakers, Napoles and other implicated individuals, through allotting and dividing such funds among themselves pursuant to a previous agreement. Petitioner was among those implicated by the so-called "whistleblowers" as a participant in the PDAF scam.

8. On 16 September 2013, the National Bureau of Investigation (NBI) and Atty. Levito D. Baligod filed with the Office of the Ombudsman (the "Ombudsman") a criminal complaint against petitioner, among others, for the crime of plunder under Republic Act (R.A.) No. 7080, otherwise known as *"An Act Defining and Penalizing the Crime of Plunder"* ("Plunder Law"). On 18 November 2013, a similar complaint was likewise filed by the Ombudsman's Field Investigation Office ("FIO") against petitioner.

9. These criminal complaints allege that (a) petitioner, while as a Senator of the Republic of the Philippines, supposedly designated or endorsed NGOs controlled by Napoles to be the recipients of his PDAF for the purpose of implementing projects authorized in the DBM Project Menu; (b) these projects, however, were either unimplemented or under implemented; and (c) the proceeds of the PDAF supposed to be allocated therefor were allegedly misappropriated and converted to the personal use of petitioner, Napoles, and other implicated individuals, by purportedly dividing among themselves the allocated amounts in accordance with the alleged scheme initially agreed upon.

10. In its Joint Resolution dated 28 March 2014 (the "Joint Resolution"),[12] the Ombudsman found probable cause to charge petitioner with the crime of plunder. In his "Petition for Certiorari and Prohibition under Rule 65 (with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction)" dated 16 June 2014 which was filed with this Honorable Court, docketed as G.R. Nos. 212694-95, and entitled *"Revilla, Jr. et al. v. Office of the Ombudsman, et al.,"* petitioner assailed the Joint Resolution for having been issued with grave abuse of discretion, or with lack of or in excess of jurisdiction. To date, said petition for certiorari is still pending resolution.

11. Meanwhile, on 5 June 2014, an Information for plunder was filed with the Sandiganbayan, charging petitioner with supposedly conspiring with Atty. Richard A. Cambe ("Atty. Cambe") and Napoles, among others, for allegedly amassing, accumulating and acquiring ill-gotten wealth, to wit:

> In 2006 to 2010, or thereabout, in the Philippines, and within this Honorable Court's jurisdiction, above-named accused RAMON M. REVILLA, JR., then a Philippine Senator and RICHARD A. CAMBE, then Director III at the Office of Senator Revilla, Jr., both public officers, committing the offense in relation to their respective offices, conspiring with one another and with JANET LIM NAPOLES, RONALD JOHN LIM, and JOHN RAYMUND DE ASIS

[12] A copy of which is attached herein as Annex "C."

did then and there willfully, unlawfully, and criminally amass, accumulate and/or acquire ill-gotten wealth amounting to at least TWO HUNDRED TWENTY FOUR MILLION FIVE HUNDRED TWELVE THOUSAND FIVE HUNDRED PESOS (Php224,512,500.00), through a combination or series of overt criminal acts, as follows:

a) By repeatedly receiving from NAPOLES and/or her representatives LIM, DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and REVILLA, JR. and/or CAMBE received, a percentage of the cost of a project to be funded from REVILLA, JR.'s Priority Development Assistance Fund (PDAF), in consideration of REVILLA, JR.'s endorsement, directly or through CAMBE, to the appropriate government agencies, of NAPOLES' non-government organizations which became the recipients and/or target implementors of REVILLA, JR.'s PDAF projects, which duly-funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain;

b) By taking undue advantage, on several occasions, of their official positions, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines.

CONTRARY TO LAW.

12. During arraignment, petitioner refused to enter any plea. In view thereof, and pursuant to Section 1(c), Rule 116 of the Rules of Court, the Sandiganbayan entered a plea of not guilty on his behalf.

13. On 20 June 2014, petitioner filed his Petition for Bail, invoking his constitutional right to be admitted to and released on bail. Subsequently, bail hearings ensued where the State presented nine (9) witnesses, namely: Susan P. Garcia ("Garcia"), Carmencita N. Delantar ("Delantar"), Lorenzo C. Drapete ("Drapete"), Mary Arlene Joy B. Baltazar ("Baltazar"),[13] Joey I. Narciso ("Narciso"), Atty. Leigh

[13] She was employed by Napoles as a bookkeeper for JLN Corporation ("JLN") from 2006 to August 2013, and was made a President of Tanglaw Para sa Magsasaka Foundation Inc,

Vhon Santos ("Atty. Santos"), Merlina P. Suñas ("Suñas"), Marina C. Sula ("Sula") and Luy.

14. Garcia is the Assistant Commissioner of the Special Services Sector of the Commission on Audit (COA) since 13 February 2014. Prior to being Assistant Commissioner, she was the Director of the Special Audit Office ("SAO"), an office within the Special Services Sector, in 2010.[14] She testified on the conduct of the government wide performance audit of the PDAF, particularly that of petitioner, covering calendar years 2007 to 2009.[15] Further, she testified that when COA requested for confirmation by petitioner of what appeared to be his signature in the copies of the PDAF documents through a letter dated 8 July 2011 (the "COA letter"), the COA did not show petitioner the original of these documents.[16]

15. Delantar was the Director of the Budget and Management Office-G ("Bureau-G") from 2007 to 2009.[17] She testified on the procedure for the release of the Special Allotment Release Order (the "SARO"). Of the twelve (12) SAROs released from petitioner's PDAF allocation, only ten (10) were processed by Bureau-G while the other two (2) were processed by Budget and Management Bureau-F of the DBM ("Bureau-F").[18] Upon evaluation, Delantar testified that her Office did not find anything irregular with the SAROs and their attachments, and as such, they processed the SARO with the imprimatur of the DBM Secretary.[19] She further confirmed that there was nothing illegal or wrong with the action of petitioner in

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Transcript of Stenographic Notes in petitioner's bail hearing for SB-14-CRM-0240 before the Sandiganbayan, First Division ("TSN") dated 25 September 2014, P.M. Session, pp.14-18, and p.43, respectively, a copy of TSN dated 25 September 2014, P.M. session is attached as Annex "D" hereof.

[14] TSN dated 10 July 2014, A.M. session, pp.33-35, a copy of the TSN dated 10 July 2014, A.M. session is attached as Annex "E" hereof.

[15] Annex "E," pp.44-45, 37-47.

[16] TSN dated 17 July 2014, P.M. session, p. 82, a copy of the TSN dated 17 July 2014, P.M. session is attached as Annex "F" hereof.

[17] TSN dated 10 July 2014, P.M. session, p.34-37, a copy of the TSN dated 10 July 2014, P.M. session is attached as Annex "G" hereof.

[18] Annex "G," p. 38.

[19] Annex "F," p. 21-23, 41.

submitting the list of projects which was the initial step in the preparation and processing of the SAROs.[20]

16. Drapete was the head of the Bureau-F which processed the other two (2) SAROs.[21] He testified that there was nothing irregular with the action of petitioner as regards the two (2) SAROs which Bureau-F processed.[22]

17. The State's key witnesses on the alleged participation of petitioner in the PDAF scam are Luy, Suñas and Sula, who confessed that they forged the PDAF documents, such as the endorsement letters, project proposals, project activity reports, project profiles, inspection and acceptance reports, disbursement reports, disbursement vouchers, accomplishment reports, acknowledgment receipts, delivery reports and certificates of acceptance.[23]

18. Luy, the second cousin of Napoles and a former officer of JLN Corporation, testified that: (a) he never gave any amount of money to petitioner; [24] (b) he never saw petitioner go to JLN's office;[25] (c) he never saw Napoles hand any money to petitioner;[26] (d) he never saw petitioner write any endorsement letter to the DBM or to the implementing agencies ("IAs");[27] (e) he never saw petitioner hand over or give to Napoles any endorsement letter for DBM or IAs;[28] (f) no fund transfer was made by Napoles to petitioner;[29] (g) no manager's check or personal check was issued by Napoles to petitioner;[30] (h) he

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[20] Annex "F," p. 41.

[21] TSN dated 10 July 2014, P.M. session, p. 84, a copy of the TSN is attached herewith as Annex "G."

[22] Annex "F," p. 74.

[23] TSN dated 25 September 2014, A.M. Session, p. 11; 28 August 2014, A.M. Session, p.59; TSN dated 11 September 2014, P.M. session, p.49, copies of the TSNs are attached herewith as Annexes "H," "I" and "J," respectively.

[24] TSN dated 20 August 2014, A.M. session, p. 94, a copy of said TSN is attached as Annex "K," hereof.

[25] *Id.*

[26] Annex "K," p. 95.

[27] Annex "I," p.62.

[28] *Id.*

[29] Annex "I," p. 65.

[30] Annex "I," p. 66.

never delivered any cash to the office or residence of petitioner;[31] (i) he has no personal knowledge that Napoles and petitioner met, talked and/or agreed about the illegal scheme constituting the crime charged;[32] (j) he does not have any proof that Atty. Cambe received any amount from him, particularly the cash amounts listed in his "Summary of Rebates;"[33] and (k) his only bases for the preparation of his "Summary of Rebates" were his "Disbursement Reports."[34]

19. Narciso is a Special Investigator III at the National Bureau of Investigation (NBI),[35] and is currently assigned at the Cybercrime Division of the NBI.[36] He testified that (a) as a cybercrime investigator, his main function was to conduct digital forensic examination; (b) sometime in January 2014, he was asked to perform forensic examination on Luy's disk drive;[37] (c) he could not authenticate the alleged disk drive of Luy as to whether the files therein were copied by Luy in 2012;[38] (d) he found the files in the disk drive as having been copied from not just one, but several computers;[39] (e) he found that the files in the disk drive have been created not by just one but several persons, among them, "Annabelle Luy," sister of Benhur Luy, a certain "Belen," another using the code "1234," and "Owner;"[40] (f) the disk drive contained deleted files, numbering 2,410;[41] (g) he said that most of the files were deleted from 4 April 2013 to 23 January 2014;[42] and (h)

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[31] Annex "I," p. 67.

[32] TSN dated 20 August 2014, P.M. session, p. 5, a copy of said TSN is attached as Annex "L" hereof.

[33] Annex "K," pp. 67-68.

[34] TSN dated 14 August 2014, P.M. session pp. 21-23, a copy of said TSN is attached as Annex "M" hereof.

[35] TSN dated 28 August 2014, P.M. session, p.14, a copy of said TSN is attached as Annex "N" hereof.

[36] *Id.*

[37] Annex "N," pp. 36-41.

[38] TSN dated 6 November 2014, P.M. session, p. 9, 16, a copy of said TSN is attached as Annex "O" hereof; see also TSN dated 6 November 2014, A.M. session, p.26, a copy of which is attached as Annex "P," hereof.

[39] Annex "O," p. 10.

[40] TSN dated 30 October 2014, P.M. session pp. 68-70; see also TSN dated 23 October 2014, A.M. session, pp. 92-93, copies of said are attached as Annexes "Q" and "R," respectively.

[41] Annex "O," pp. 18-19.

[42] *Id.*

the disk drive contained files created in 2013 and files modified in 2013 when Luy was already in the custody of the NBI.[43]

20. Overall, Narciso testified that he is not 100% certain that the disk drive is reliable.[44]

21. Atty. Santos, a Bank Officer II of the Anti-Money Laundering Secretariat of the Anti-Money Laundering Council (AMLC)[45] testified that (a) he and a team of bank officers conducted a financial investigation on the bank accounts and transactions of accused Napoles, petitioner and Atty. Cambe;[46] and (b) Atty. Cambe was found to have no money in his bank accounts,[47] thus he has no ill-gotten wealth.

22. Suñas was a former employee of Napoles' JLN Corporation.[48] She testified that (a) she forged signatures and documents pursuant to Napoles' instructions;[49] (b) she never delivered money to the house of petitioner or to the house of Atty. Cambe;[50] (c) she did not personally see petitioner receiving money from Napoles or from any of Napoles' employees;[51] and (d) she does not have personal knowledge on whether petitioner received any amount allegedly given by Napoles or Napoles' employees to Atty. Cambe from the PDAF funds.[52]

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[43] Annex "Q," pp. 77-82; Annex "P," pp.24-26.
[44] Annex "O," pp.39-40; Annex "P," p.32.
[45] TSN dated 9 October 2014, P.M. session, p.8, a copy of said TSN is attached as Annex "S" hereof.
[46] Annex "S," p.10, pp.42-43.
[47] Annex "R,"pp. 18-20, pp. 29-30.
[48] TSN dated 4 September 2014, P.M. Session, p. 15, a copy of said TSN is attached as Annex "T" hereof.
[49] Annex "J," p. 49; TSN dated 11 September 2014, A.M. session, pp. 115-118, a copy of which is attached as Annex "U" hereof.
[50] TSN dated 18 September 2014, A.M. Session, pp. 60-61, a copy of said TSN is attached as Annex "V" hereof.
[51] Annex "U," p. 49.
[52] Annex "V," p. 58.

23. Sula was an employee in Jo Chris Trading and JLN Corporation, two of the companies owned by Napoles.[53] She testified that (a) she never personally talked, dealt with or transacted with petitioner on behalf of Masaganang Ani para sa Magsasaka Foundation, Inc. ("MAMFI");[54] (f) she never gave money to petitioner;[55] (b) she was merely told by Napoles of the latter's alleged transactions with petitioner;[56] and (c) she did not witness the negotiations pertaining to the PDAF scam.[57]

24. In the assailed Resolution dated 1 December 2014, a copy of which was received by petitioner on 2 December 2014, the Sandiganbayan denied petitioner's Petition for Bail, notwithstanding the absence of any direct proof of petitioner's alleged participation in the crime charged and the material inconsistencies of the testimonies of the State's witnesses. The dispositive portion of said Resolution states that:

> In fine, the prosecution has duly established that there exists strong evidence that accused Revilla, Cambe and Napoles, in conspiracy with one another, committed the capital offense of plunder defined and penalized under RA 7080 (*sic*), and thus are not entitled to the constitutional right to bail. However, the Court cautions that such conclusion shall not be regarded as a prejudgment on the merits of the case that are to be determined only after a full-blown trial.
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> WHEREFORE, in light of all the foregoing, accused Ramon M. Revilla, Jr., Richard A. Cambe, and Janet Lim Napoles are DENIED bail.
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> SO ORDERED.

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[53] Annex "V," p. 75.
[54] Annex "H," p. 70.
[55] TSN dated 18 September 2014, P.M. session, p. 81, a copy of said TSN is attached as Annex "W" hereof.
[56] *Id.*, p.24, Annex "H," p.70.
[57] Annex "H," p. 65.

25. Aggrieved, petitioner filed an Omnibus Motion, which the Sandiganbayan however denied in its Resolution dated 26 March 2015, to wit:

> WHEREFORE, in light of all the foregoing, accused Napoles' Motion for Reconsideration (Re: Resolution dated 01 December 2014), dated December 17, 2014; accused Revilla's "Omnibus Motion: (1) For the Reconsideration [of the Resolution dated 1 December 2014]; and (2) To Adduce Additional Evidence" dated 17 December 2014; accused Cambe's Motion for Reconsideration (Re: Resolution Promulgated on December 1, 2014), dated December 15, 2014 and Motion to Adduce Additional Evidence and Request for Subpoena embodied in his Reply, dated January 28, 2015, are DENIED for lack of merit.
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> SO ORDERED.

26. On 10 April 2015, petitioner obtained a copy of the assailed Resolution dated 26 March 2015. Under Section 4, Rule 65 of the Rules of Court, petitioner has a period of sixty (60) days from 10 April 2015, or until 9 June 2015, within which to file the instant petition.

Hence, this Petition.

GROUND FOR THE PETITION

THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONER'S APPLICATION FOR ADMISSION TO BAIL DESPITE THE FACT THAT THE EVIDENCE ON RECORD DO NOT SHOW A CLEAR AND STRONG EVIDENCE OF HIS GUILT OF THE CRIME OF PLUNDER.

Discussion

There is no clear, strong and categorical proof that petitioner amassed, accumulated and acquired ill-gotten wealth from his PDAF allocations from 2006 to 2010.

27. In the assailed Resolutions, the Sandiganbayan stressed its use of the "totality of evidence" or "evidence as a whole" standard in determining whether there is evident proof or presumption great that petitioner committed the crime of plunder.

28. The Sandiganbayan likewise used this "totality of evidence" standard in finding conspiracy against petitioner, Atty. Cambe and Napoles. This approach of the Sandiganbayan masks the specific and glaring factual circumstances which negate the finding of a clear, strong and categorical evidence that petitioner is guilty of amassing, accumulating or acquiring, or conspiring to amass, accumulate or acquire, ill-gotten wealth from his PDAF allocations from 2006 to 2010. As will be shown below, the Sandiganbayan utterly misapplied principles of criminal law and evidence,[58] especially in this case where the liberty and life of petitioner is at stake.

29. In its assailed Resolution dated 1 December 2014, the Sandiganbayan unequivocally found that the State failed to present direct evidence to show that petitioner supposedly received moneys, commissions or kickbacks from his PDAF allocation, *viz*:

> Accused Revilla managed to remain incognito in reaping benefits from the illegal scheme with the help and cooperation of accused Cambe. ***Concededly, there are no direct proofs that accused Revilla received commissions/ rebates out of the proceeds of his PDAF routed to accused Napoles***, but circumstances persuasively attest that accused Revilla on several occasions, received money from the illegitimate deals involving his PDAF, through accused Cambe.[59]

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[58] See People v. Cabral, G.R. No. 131909, 18 February 1999.

[59] Resolution dated 1 December 2014, p. 64; emphasis supplied.

30. In *Ong v. People*,[60] this Honorable Court ruled that certiorari can be properly resorted to where the factual findings complained of are not supported by the evidence on record. In this case, the following established facts were patently disregarded by Sandiganbayan, to wit:

a. Luy never gave any amount of money to petitioner;[61]

b. Luy never saw petitioner go to JLN's office;[62]

c. Luy never saw Napoles hand any money to petitioner, [63] which likewise shows the absence of any dealing or transaction between them;

d. Luy never saw petitioner write any endorsement letter to the DBM or to the IAs;[64]

e. Luy never saw petitioner hand over or give to Napoles any endorsement letter for DBM or IAs;[65]

f. No fund transfer was made by Napoles to petitioner;[66]

g. No manager's check or personal check was issued by Napoles to petitioner;[67]

h. No cash was delivered by Luy to the office or residence of petitioner;[68] and

i. Luy has no personal knowledge that Napoles and petitioner met, talked and/or agreed about the illegal scheme constituting the crime charged.[69]

31. ***Clearly, it is undisputed that there is no direct proof in this case that petitioner received moneys, kickbacks or commissions***

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[60] 342 SCRA 372 (2000).
[61] *Supra,* note 24.
[62] *Id.*
[63] *Supra,* note 26.
[64] *Supra,* note 27.
[65] *Id.*
[66] *Supra,* note 29.
[67] *Supra,* note 30.
[68] *Supra,* note 31.
[69] *Supra,* note 32.

from his PDAF allocations from 2006 to 2010. This alone should have warranted the grant of bail to petitioner.

32. Absent any direct proof of petitioner's supposed receipt of moneys, kickbacks or commissions from his PDAF allocations, the State's other pieces of evidence fall short of the standard of a clear, strong and categorical evidence of petitioner's guilt for plunder.

The Sandiganbayan gravely erred in giving much probative value on the testimonies of the State's witnesses, which provide no concrete and credible proof that Atty. Cambe supposedly received kickbacks and commissions for and on behalf of petitioner.

33. In finding a clear, strong and categorical evidence of petitioner's guilt despite the absence of direct evidence that he received any moneys from his PDAF allocation, the Sandiganbayan ruled that "circumstances persuasively attest that [petitioner] on several occasions, received money from the illegitimate deals involving his PDAF, ***through*** accused [Atty.] Cambe."[70] The Sandiganbayan thus baselessly turns to Atty. Cambe, regards him as petitioner's representative, and concludes that whatever moneys Atty. Cambe supposedly gained are *ipso facto* petitioner's. The Sandiganbayan is grievously mistaken as its conclusion is belied by the evidence on record.

34. Indeed, if this Honorable Court would sustain the Sandiganbayan's approach and reasoning in a judicial process where the life and liberty of a person are at stake, and where the State is required to prove no less than strong evidence of guilt, it would set a dangerous precedent for any accused, and would disregard the very concept of presumption of innocence in his favor. ***Strong evidence of guilt – which is sufficient to deny one's Constitutional right to bail –***

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[70] Resolution, p. 64; emphasis supplied.

cannot be made to depend on proof that another person committed an unlawful act – which Atty. Cambe did not.

35. Lest this Honorable Court be misled, it cannot be denied that the testimonies of the State's witnesses, with respect to Atty. Cambe's alleged receipt of kickbacks, rest on shaky foundation. The State failed to present clear and convincing contrary proof against the following undisputed facts:

a. Luy was in Europe from 18 to 29 October 2008,[71] which renders him impossible to meet with Atty. Cambe, and for Atty. Cambe to have received, on behalf of petitioner, the alleged kickback in the amount of P3,000,000.00 on 24 October 2008, as Luy falsely entered in his "Summary of Rebates"[72] and "Disbursement Reports;"

b. Atty. Cambe and his family were in the United States from 6 to 27 May 2008,[73] which renders it impossible for Luy to have given Atty. Cambe the amount of P5,000,000.00 on 9 May 2008, as Luy again falsely indicated in his "Summary of Rebates" and "Disbursement Reports;"[74]

c. Luy categorically admitted that he does not have any proof (other than his perjured testimony) that Atty. Cambe received any amount from him, particularly the cash amounts listed in his "Summary of Rebates;"[75]

d. Luy did not present any basis for the SARO numbers appearing in his "Summary of Rebates." Luy testified that his only bases for the preparation of his "Summary of Rebates" were his "Disbursement Reports." However, some of these "Disbursement Reports" do not indicate any SARO numbers, thus making Luy an incredible witness;[76]

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[71] Annex "K," p. 87.

[72] Exhibit "G-1," a copy of which is attached as Annex "X" hereof.

[73] Cambe's Exhibit "282" series, a copy of which is attached as Annex "Y" hereof.

[74] Copies of the 2006 to 2010 Disbursement Reports are attached as Annexes "Z" to "Z-4" hereof.

[75] Annex "K,"pp.67-68.

[76] Annex "M," p. 23-24.

36. More importantly, Atty. Cambe was found to have no ill-gotten wealth, as conceded by the State's witness Atty. Santos.[77] The AMLC found no money or property which would show Atty. Cambe's supposed amassing, accumulation or acquisition of property. This shatters the State's and Luy's allegations that Atty. Cambe received kickbacks and commissions. The weakness of the evidence against Atty. Cambe dilutes the State's evidence against petitioner.

37. In the assailed Resolutions, the Sandiganbayan has been unable to explain or specify how it concluded, by clear and convincing evidence, that petitioner amassed, accumulated and acquired ill-gotten wealth as "established by testimonies of the witness and the documents they testified to."[78]

38. The State's own witnesses in fact admitted that they forged the signatures on the PDAF documents or fabricated documents to establish the implementation of the projects funded through the PDAF. The record of this case is replete with such admissions.[79] To be sure, Sandiganbayan even found that Atty. Cambe's signatures were forged:

> With regard to accused Cambe's supposed forged signatures on the MOAs ["Memorandum of Agreement"] and liquidation documents, ***the Court admits that there are dissimilarities and observable strokes in the signatures suggestive that Cambe may not be the one who signed on some of these documents.***[80]

39. ***More importantly, the glaring absence of any independent evidence showing that petitioner, in turn, received kickbacks from Atty. Cambe should have been considered by Sandiganbayan in petitioner's favor.*** The alleged receipt of kickbacks by petitioner cannot be simply inferred from the sheer fact that Atty. Cambe worked for him and allegedly received certain monies from the NGOs of Napoles. Indeed, the State continues to speculate as to petitioner's

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[77] Annex "R," pp.18-20, 29-30.
[78] Resolution, p. 56.
[79] *Supra,* note 23.
[80] Resolution, p. 62; emphasis supplied.

participation in the alleged crime, by claiming that "[i]n exchange for his repeated endorsements of Napoles' NGOs as project partners in the implementation of his identified PDAF projects, [petitioner] repeatedly received commissions,"[81] without pointing to any portion of the record where such conclusion may be deduced from.

40. In fact, the State's own evidence,[82] which the Sandiganbayan disregarded, shows that its witness, Suñas, represented the "G[ov]. Eunice Guerrero-Cuenco Foundation" in receiving payments from the Technology and Livelihood Resource Center (TLRC) in the total amount of Php19,200,000.00. Gov. Eunice Guerrero-Cuenco Foundation is neither an NGO that is associated with Napoles nor one of the NGOs subject of the plunder case. This only proves that petitioner's supposed participation in endorsing Napoles' NGOs and receiving kickbacks therefrom is based on pure guesswork.

Since there is no proof that petitioner amassed, accumulated or amassed ill-gotten wealth, there is neither a clear, strong nor categorical proof that petitioner received at least Php50,000,000.00 from his PDAF allocation.

41. Notwithstanding the established fact that there is no direct proof of petitioner's alleged receipt of PDAF monies or commissions therefrom, the Sandiganbayan gave weight on Luy's disk drive to purportedly support Luy's bare testimony. This disk drive supposedly shows the amounts received by petitioner, ***through*** Atty. Cambe, from Napoles and/or Luy. Contrary to the Sandiganbayan's finding, the

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[81] The State's "Comment/Opposition To Accused Revilla's Omnibus Motion [(1) For Reconsideration of the Resolution dated 1 December 2014, and (2) To Adduce Additional Evidence] dated 9 January 2015 (the "Comment"), par. 26, pp. 7-8, a copy of which is attached as Annex "AA" hereof.

[82] Exhibits "A-22-h," "A-22-m," "A-22-t" and "A-22-z," copies of which are attached as Annexes "BB" to "BB-3" hereof.

testimony of the State's own witness, Narciso, contradicts its bare allegations.

42. During cross-examination, it was pointed out that some of the files in Luy's disk drive were modified at the time when Luy was no longer connected with Napoles.[83] Worse, files were modified when the disk drive was already in the possession of the NBI.[84] To recall, Luy was already in custody of the NBI by ***March 2013.***

a. File no. 1 (2004 September Disbursement.xls) was last saved only on ***30 June 2013;***[85]

b. File no. 5 (2004 October Disbursement.xls) was last saved only ***20 June 2013;***[86]

c. File no. 31 (03-2007 March Disbursement.xls)", was last saved only on ***15 July 2013;***[87] and

d. File 58 (15_Disbursement.xls) was last saved only on ***17 July 2013.***[88]

43. The Sandiganbayan's heavy reliance on the disk drive, despite its admitted shortcomings,[89] is therefore tainted with grave abuse of discretion especially when:

a. File no. 1 (2004 September Disbursement.xls) was allegedly created on 1 September 2004, but it ***was last saved on 30 June 2013,*** or nine (9) years after, and Narciso admitted that said file was possibly modified;[90]

b. File no. 5 (01-2005 January Disbursement.xls) was created on 4 January 2005, but it was ***last saved on 20 June 2013,*** or eight

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[83] *Supra,* note 43.

[84] *Id.*

[85] The State's Exhibit "RR," or "Printout of Tabulated List of Files with Corresponding Metadata and Extended Files Properties,"a copy of which is attached as Annex "CC" hereof.

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] Resolution dated 26 March 2015, p. 21.

[90] *Supra,* note 43.

(8) years after, and Narciso admitted that said file was possibly modified;[91]

c. File no. 31 (03-2007 March Disbursement.xls) was created on 2 March 2007, but it ***was last saved on 15 July 2013,*** or six (6) years after, and Narciso admitted that said file was possibly modified;[92] and

d. File no. 58 (2004 September Disbursement.xls) was created on 1 September 2004, but it ***was last saved on 20 June 2013,*** or nine (9) years after, and Narciso admitted that said file was possibly modified.[93]

44. Besides his categorical admission that the above files could have been modified, Narciso likewise failed to explain the chain of possession of the disk drive. With the high probability that the contents thereof may have been modified and altered at the time Luy was already in the custody of the NBI, and with Narciso's failure to explain its chain of possession, the Sandiganbayan should not have given the contents of said disk drive—or Narciso's testimony—any weight or credibility.

45. In fact, there is no proof of the truth of the contents of the disk drive. Narciso never had the opportunity to examine the source documents or the source computer. He admitted that when he testified that the hash values are intact, he was merely referring to the hash value of the files in the disk drive and those in the image disk files. Narciso did not compare the hash values of the files in the disk drive and the hash values of the original source files where the disk drive files were allegedly copied.[94] In fact, the hash values of the first two files, the 2004 September disbursement.xls and 2004 October disbursement.xls in the Senate copy, are different from the hash value appearing in the Ombudsman copy.[95] ***When hash values are different in files that are supposedly the same or identical, it only proves that there is tampering.***

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[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] Annex "P," pp. 30-31.

[95] Annex "O," pp. 32-34.

46. Even then, when asked in open court, Narciso – who ranks himself as a mere 75% expert – admitted that he is not 100% certain that the disk drive is reliable.[96] Indeed, it is difficult for petitioner to believe that he would be deprived of his liberty based on an unreliable piece of evidence from an incredible witness. As held by this Honorable Court in *People of the Philippines v. Mirandilla, Jr.*:[97]

> Evidence to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself – such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.

47. It must be stressed that the State also failed to rebut or explain the obvious contradiction between Narciso's findings and Luy's declarations, which the Sandiganbayan utterly disregarded, thus:

a. Luy said that he copied the files of the iMac computer of Napoles into his disk drive in 2012;[98] Narciso testified on cross examination that he could not authenticate the alleged disk drive of Luy as to whether the files therein were copied by Luy in 2012;[99]

b. Luy said that he himself copied ***all*** the files in his alleged disk drive from an iMac computer of Napoles;[100] Narciso testified that he found the files in the disk drive as having been copied from not just one, but several computers;[101]

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[96] *Supra,* note 44.

[97] G.R. No. 186417, 27 July 2011.

[98] TSN dated 31 July 2014, A.M. session, p.68, a copy of which is attached as Annex "DD" hereof.

[99] *Supra,* note 38.

[100] Annex "I," p. 37.

[101] Annex "O," p. 10.

c. Luy said that he alone created the files and entered data in the iMac computer of Napoles;[102] Narciso testified that he found that the files in the disk drive to have been created not by just one but several persons, among them, "Annabelle Luy," sister of Benhur Luy, a certain "Belen," another using the code "1234," and "Owner;"[103]

d. Luy said he used the USB cable of the disk drive in copying the files from the iMac computer of Napoles, which meant that he could not have copied the deleted files from the source computer as a device like a USB cable cannot copy deleted files into a disk drive or another computer;[104] Narciso testified that the disk drive contained deleted files, numbering 2,410, thereby indicating that the files were created, and later deleted, when Luy was already in the custody of the NBI or under the Witness Protection Program;[105]

e. Since Luy said that he alone created the files in the source computer and he alone copied the same files into his alleged disk drive,[106] the files should have the same hash values; on cross-examination, Narciso admitted that some files did not have the same hash values as all the other files.[107] As stated, this proves tampering;

f. Luy said that he copied the files into his alleged disk drive from the source computer in 2012;[108] Narciso found that the disk drive contained files created in 2013 and files modified in 2013 when Luy was already in the custody of the NBI;[109] and

g. As stated, the metadata of the files in the disk drive indicated that they have been accessed, modified and last saved after Luy was allegedly rescued in March 2013 by the NBI from his illegal detention by Napoles,[110] thereby indicating that the files have been altered and modified after Luy claimed to have copied them into his alleged disk drive in 2012.

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[102] TSN dated 7 August 2014, P.M. session, p.23, a copy of said TSN is attached as Annex "EE," hereof.
[103] *Supra*, note 40.
[104] Annex "I," p.47
[105] *Supra*, note 42.
[106] *Supra*, note 102.
[107] *Supra*, note 95.
[108] *Supra*, note 98.
[109] *Supra*, note 93.
[110] *Id.*

48. It was therefore a grave mistake for the Sandiganbayan to simply brush aside these material and glaring inconsistencies. It is even manifest error for the Sandiganbayan to conclude that Luy's spontaneous explanations of the documents' contents cemented their reliability in the finding of clear and strong evidence against petitioner. Contrary to the Sandiganbayan's conclusion, no amount of reliance can certainly be placed on the documents or files found in Luy's disk drive given the number and significance of these contradictions.

49. The contents of the "Summary of Rebates"[111] are all based on hearsay. The files, particularly Luy's "Disbursement Reports,"[112] from which the data in the Summary of Rebates were supposedly lifted are not the source documents or primary proof of receipt of PDAF monies or commissions. The State failed to present the disbursement vouchers, terminal reports and liquidation reports of Napoles' NGOs, which are allegedly the bases of the figures in Luy's Disbursement Reports. With the State's utter failure to demonstrate how the information reflected on the Summary of Rebates and Disbursement Reports were generated and how the information contained therein could be relied upon as true, with more reason that the case of *Aznar v. Citibank*[113] should be applied in petitioner's favor. Said this Honorable Court in *Aznar*:

> Pertinent sections of Rule 5 read:
>
> > Section 1. *Burden of proving authenticity.* – The person seeking to introduce an electronic document in any legal proceeding has the burden of proving its authenticity in the manner provided in this Rule.
> >
> > Section 2. *Manner of authentication.* – Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:
> >
> > (a) by evidence that it had been digitally signed by the person purported to have signed the same;

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[111] *Supra,* Annex "X."

[112] *Supra,* Annexes "Z" to "Z-4."

[113] G.R. No. 164273, 28 March 2007.

> (b) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or
>
> (c) by other evidence showing its integrity and reliability to the satisfaction of the judge.
>
> Aznar claims that his testimony complies with par. (c), *i.e.*, it constitutes the "other evidence showing integrity and reliability of Exh. "G" to the satisfaction of the judge." The Court is not convinced. Aznar's testimony that the person from Ingtan Agency merely handed him the computer print-out and that he thereafter asked said person to sign the same cannot be considered as sufficient to show said print-out's integrity and reliability. As correctly pointed out by Judge Marcos in his May 29, 1998 Decision, Exh. "G" does not show on its face that it was issued by Ingtan Agency as Aznar merely mentioned in passing how he was able to secure the print-out from the agency; Aznar also failed to show the specific business address of the source of the computer print-out because while the name of Ingtan Agency was mentioned by Aznar, its business address was not reflected in the print-out.
>
> Indeed, Aznar failed to demonstrate how the information reflected on the print-out was generated and how the said information could be relied upon as true. x x x [114]

50. As also above shown, Luy does not have any basis for the SARO numbers appearing in said Summary of Rebates. He even admitted that some of his entries were only based on information relayed to him by Napoles, which information he did not personally know as a fact.[115] Further, Luy's Disbursement Reports do not contain any SARO number. Worse, it cannot be overemphasized that the computer files in Luy's disk drive were altered and modified when Luy was already in NBI custody.

51. Hence, these files cannot be relied upon because they are tampered, unverified and unauthenticated. Contrary to the Sandiganbayan's conclusion that the entries are "not hearsay evidence" as they are "summaries of day-to-day transactions of the

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[114] *Id.*

[115] Annex "EE," pp. 17, 120.

JLN office pertaining to the PDAF",[116] petitioner respectfully submits that the entries do not constitute "entries in the course of business,"[117] which is an exception to the hearsay rule.

52. At the very least, it is required by the Rules and jurisprudence that the entrant must be in a position to know the facts stated in the entries. Particularly, this Honorable Court's ruling in *Nestle Philippines, Inc. v. FY Sons, Inc.*[118] explained that the entrant must have personal knowledge of the information which he entered, thus:

> The provision does not apply to this case because it does not involve entries made in the course of business. ***Rayos testified on a statement of account she prepared on the basis of invoices and delivery orders which she, however, knew nothing about. She had no personal knowledge of the facts on which the accounts were based since, admittedly, she was not involved in the delivery of goods and was merely in charge of the records and documents of all accounts receivable as part of her duties as credit and collection manager. She thus knew nothing of the truth or falsity of the facts stated in the invoices and delivery orders, i.e., whether such deliveries were in fact made in the amounts and on the dates stated, or whether they were actually received by Sandiganbayan. She was not even the credit and collection manager during the period the agreement was in effect.*** This can only mean that she merely obtained these documents from another without any personal knowledge of their contents.
>
> The foregoing shows that Rayos was incompetent to testify on whether or not the invoices and delivery orders turned over to her correctly reflected the details of the deliveries made. Thus, the CA correctly disregarded her testimony.[119]

53. Likewise, in *Security Bank and Trust Company v. Gan*,[120] this Honorable Court held that:

> Let us be clear, at the outset, what the transactions covered by the debit memos are. They are, at bottom, credit accommodations

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[116] Resolution dated 26 March 2015, p. 23.
[117] Section 43, Rule 130 of the Rules of Court.
[118] G.R. No. 150780, 5 May 2006.
[119] Emphasis supplied.
[120] G.R. No. 150464, 27 June 2006.

> said to have been granted by the bank's branch manager Mr. [Q]ui to the defendant, and they are, therefore loans, to prove which competent testimonial or documentary evidence must be presented. In the fac[e] of the denial by the defendant of the existence of any such agreement, and the absence of any document reflecting it, the testimony of a party to the transaction, i.e., Mr. [Q]ui, or of any witness to the same, would be necessary. The plaintiff failed to explain why it did not or could not present any party or witness to the transactions, but even if it had a reason why it could not, ***it is clear that the existence of the agreements cannot be established through the testimony of Mr. Mercado, for he was [not in] a position to [know] those facts. As a subordinate, he could not have done more than record what was reported to him by his superior the branch manager, and unless he was allowed to be privy to the latter's dealings with the defendant, the information that he received and entered in the ledgers was incapable of being confirmed by him.***
>
> There is good reason why evidence of this nature is incorrigibly hearsay. ***Entries in business records which spring from the duty of other employees to communicate facts occurring in the ordinary course of business are prima facie admissible, the duty to communicate being itself a badge of trustworthiness of the entries, but not when they purport to record what were independent agreements arrived at by some bank officials and a client.*** In this case, the entries become mere casual or voluntary reports of the official concerned. To permit the ledgers, prepared by the bank at its own instance, to substitute the contract as proof of the agreements with third parties, is to set a dangerous precedent. ***Business entries are allowed as an exception to the hearsay rule only under certain conditions specified in Section 43, which must be scrupulously observed to prevent them from being used as a source of undue advantage for the party preparing them.***[121]

54. Thus, in the absence of Luy's personal knowledge of the alleged transactions, the Sandiganbayan's unqualified reliance on the "entries in the course of business" as exception to the hearsay rule, to salvage the character of Luy's testimony must fall.

In the absence of any credible testimonial evidence, the State is required to present credible documentary evidence to link

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[121] Emphasis supplied.

petitioner to the alleged crime. However, during the bail proceedings, petitioner, at the very least, was able to cast serious doubt as to (a) the authenticity of the PDAF documents, and more importantly, (b) his alleged knowledge and participation in the execution of said documents. Thus, no strong evidence of guilt could arise from said documents.

55. The Sandiganbayan belittles petitioner's proof that the PDAF documents were executed without his participation and knowledge as his purported signatures thereon were forged. Instead, the Sandiganbayan relies heavily on petitioner's alleged confirmation letter dated 20 July 2011 to COA (the "20 July 2011 letter"), as regards petitioner's or his authorized representative's apparent signature in the PDAF documents attached to the COA letter.[122]

56. In his Judicial Affidavit dated 19 November 2014, which he identified in open court, Atty. Desiderio Pagui ("Atty. Pagui") whose handwriting expertise was affirmed by this Honorable Court,[123] concluded that petitioner's purported signature appearing on said letter was not his.[124] It bears to stress that in his handwriting examination report entitled "Report No. 09-10/2013" dated 3 December 2013 (the "Pagui Report"), Atty. Pagui noted the glaring and marked differences between petitioner's standard signatures and the signature appearing in the 20 July 2011 letter.[125] It is therefore without a doubt that petitioner's purported signature in the confirmation letter is forged.

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[122] Resolution dated 26 March 2015, pp 15-17.

[123] *See* Republic of the Philippines v. Court of Appeals, et al., G.R. No. 84966, 21 November 1991; Titan Construction Corp. v. David, Sr., G.R. No. 169548, 15 March 2010, 615 SCRA 362.

[124] Atty. Pagui's Judicial Affidavit, pages 10 to 11, a copy of which is attached as Annex "FF" hereof.

[125] Atty. Pagui's Report dated 3 December 2013 (the "Pagui Report"), pp. 5-6, a copy of which is attached as Annex "GG" hereof.

57. In any event, assuming, although highly disputed, that the 20 July 2011 letter is genuine, it does not provide a "conclusive confirmation" on the genuineness of petitioner's alleged signatures in the PDAF Documents. There is also nothing in said letter which proves or even indicates that petitioner categorically admitted the authenticity of his and Atty. Cambe's signatures. The confirmation letter merely provides that after an initial examination, it *appears* that the signatures on the documents attached to the COA letter are purportedly petitioner's and Atty. Cambe's signatures, thus:

> ***After going through these documents and initial examination, it appears*** that the signatures and/or initials on these documents are my signatures or that of my authorized representative.[126]

58. Thus, it is erroneous for the Sandiganbayan to conclude that petitioner would "relay to COA an 'unsure' confirmation, without ascertaining further the whereabouts of the documents the soonest, considering that they pertained to multiple transactions involving tens of millions of pesos of his PDAF allocations."[127] On the contrary, and as it is evident on the face of the purported confirmation, petitioner, assuming that he wrote the same, only conducted an initial examination of the letter and its attachments.[128]

59. Furthermore, the State's witness, then SAO Director Garcia, confirmed that the documents attached to the COA letter were mere photocopies, and that petitioner or his representative were not given access to nor allowed to examine the originals of these documents.[129] These circumstances justify petitioner's tentative and cautious reply, and consequently, the unreliability of the confirmation letter as basis for the Sandiganbayan's Resolutions.

60. The Sandiganbayan summarily dismisses petitioner's position that the latter's signatures in the PDAF documents were

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[126] Emphasis supplied.

[127] Resolution dated 26 March 2015, p. 16.

[128] *Id.*

[129] *Supra*, note 16.

forged because it alleged that the 20 July 2011 letter encompasses the authorship of the 168 PDAF documents attached to the COA letter.[130] Petitioner submits that this constitutes a hasty decision, especially considering that petitioner presented several independent pieces of evidence to prove that his and Atty. Cambe's signatures on the PDAF documents were likewise forged.[131]

61. Even assuming, although highly disputed that petitioner's signatures in the PDAF documents are authentic, his alleged participation i.e. endorsing Napoles' NGOs, does not constitute an element of, much less prove, the crime of plunder. The act of endorsing has no relation and cannot amount to the element of amassing, accumulating, or acquiring ill-gotten wealth. There is likewise nothing in the pertinent laws and rules and regulations[132] relating to the implementation of the PDAF, which proscribe petitioner from endorsing NGOs. To be sure, the IAs are not bound by any endorsement from petitioner or any legislator, since the latter neither has the power nor authority to implement his PDAF allocation, nor does he have operational control over the IAs. The IAs exercise absolute and independent discretion in the implementation of the PDAF projects.[133] Similarly, COA Circular No. 2007-001 dated 25 October 2007 states that the implementing agencies have the sole and unhindered discretion in determining a qualified NGO to implement projects from government funds.[134]

62. In *United States v. Elviña,*[135] this Honorable Court held that the act from which a presumption of criminal intent springs must be a criminal act by itself. Here, there was nothing illegal or criminal in the

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[130] Resolution dated 26 March 2015, p. 16.

[131] Copies of the Pagui and Azores' reports presented during bail hearing are attached as Annex "HH" series hereof.

[132] General Appropriations Act, Republic Act No. 9184, COA Circular No. 2007-001 dated 25 October 2007, General Procurement and Policy Board Resolution No. 12-2007 dated 29 June 2007, National Budget Circular (NBC) No. 537 dated 30 February 2012, NBC No. 547 dated 18 January 2013.

[133] NBC No. 537, pp. 1, 2, 7; NBC No. 547, pp. 2, 6, 7, copies of which are attached as Annexes "II" and "II-1", respectively.

[134] COA Circular No. 2007-001, sections 4.5.1, 4.5.2., 4.5.3 (h), (j) and (k), and 5.3, a copy of said COA Circular is attached as Annex "JJ" hereof.

[135] G.R. No. L-7280, 13 February 1913, 24 Phil. 230.

acts allegedly committed by petitioner. Even supposing, merely for the sake of argument, that petitioner performed certain acts that the State ascribes against him, these cannot constitute strong evidence of guilt. Indeed, there was nothing criminal or felonious in endorsing the NGOs to implement projects under the PDAF, or even in allegedly signing the various documents. Such acts, assuming they are true, do not in any way prove the elements of the crime of plunder, particularly, that petitioner amassed, accumulated or acquired, or in any way received ill-gotten wealth.

63. In the assailed Resolutions, the Sandiganbayan stated that it did not speculate but merely inferred its conclusions from the supposed "facts or evidence." This is belied by the evidence, as above shown. While speculation may be distinguished from inference, the fact remains that the circumstances presented by the State's own evidence could not have led the Sandiganbayan to infer that petitioner received any amount from his PDAF allocation. ***Verily, as the Sandiganbayan had to make a speculation or even an inference from the "totality of evidence" in order to link petitioner as a participant in the alleged scheme, it is clear that there is no strong evidence against him.***[136] To deny petitioner's bail application, "strong evidence of guilt" is required and nothing less. As held by this Honorable Court in *Republic v. Sandiganbayan:*

> At best, the bare testimonies of Dr. Doromal and deceased Commissioner Bautista, in the eyes of the Court, yield nothing but mere uncorroborated speculations or suspicions insofar as the PCGG attempted to establish the *"prima facie* factual foundation" that would hold up the sequestration order against SIPALAY. ***But a fact cannot be found by mere surmise or conjecture. Suspicion cannot give probative force to testimony which in itself is insufficient to establish or to justify an inference of a particular fact, for "the sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass."*** And as it is not the habit of any courts of justice to yield themselves up in matters of right to mere conjectures and possibilities, courts are not permitted to render verdicts or judgments upon guesses or surmises.[137]

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[136] *See* Comment or Annex "AA," par. 28, p. 8.

[137] Emphasis supplied.

64. Aside from the testimonies pertaining to the actual transactions, it was also revealed by the State's expert witness Narciso that Luy's disk drive has been altered at the time when he was already in the custody of the NBI. Further, the disbursement reports do not contain the signatures of the supposed signatories. Hence, the authenticity and integrity of these pieces of evidence are inevitably doubtful and thus, do not merit any consideration in petitioner's prosecution. Finally, it is established that petitioner's endorsement of the NGOs, assuming he did the same, does not constitute a crime in itself, nor an element of plunder. Therefore, stripped of its purportedly supporting evidence, the State is left with Luy's testimony, which is hearsay at least, and incredible at most.

65. While the case of *People v. Cabral*[138] provides that the burden of proof to grant or deny a petition for bail is "presumption great," petitioner's evidence in this case overwhelmingly disproves the Sandiganbayan's assertion that the State's submissions are "strong, clear, and convincing to an unbiased judgment and excludes all reasonable probability of any other conclusion." The Sandiganbayan turned a blind eye to petitioner's evidence, and highlighted the State's proof without qualification or condition. The invocation of the principle of "totality of evidence" is misplaced when the "factual bases" which comprise the same are of questionable credibility and probative weight. The presumption of innocence accorded the accused, a presumption enshrined in the Constitution, outweighs the presumption great ardently invoked by the Sandiganbayan.

66. The Sandiganbayan's utter disregard of the evidence pointed out by petitioner, as well as established principles of criminal law and evidence in finding that the evidence of petitioner's guilt for the crime of plunder is strong constitutes grave abuse of discretion that warrants its immediate reversal and nullification by this Honorable Court.

There is no clear, strong, categorical and convincing evidence to prove

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[138] G.R. No. 131909, 18 February 1999.

conspiracy among the accused in SB-14-CRM-0240.

67. From the foregoing, it is clearly established that the State has miserably failed in adducing clear, strong, categorical and convincing evidence to prove the individual acts of each of the accused in SB-14-CRM-0240, much less the "totality" of their acts to infer complicity of criminal intent to commit the crime of plunder among the accused.

68. It is a basic rule that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[139] For conspiracy to exist, it is essential that there must be a conscious design to commit an offense.[140] To hold an accused, in this case herein petitioner, guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity.[141] The State has the burden to prove petitioner's "intentional participation in the transaction with a view to the furtherance of the common design and purpose."[142]

69. In this case, however, the alleged overt acts of each of the accused do not clearly and convincingly show their conspiracy to commit the crime of plunder. Neither the alleged "facts" by the "totality of evidence" standard, amount to an evident proof of conspiracy, as to exclude all reasonable probability of any other conclusion.

70. First, the State had not sufficiently established that petitioner endorsed Napoles' fake NGOs. It will not be amiss to point out that the endorsement letters allegedly showing petitioner's intentional participation in the scheme to commit plunder, actually bear forged signatures. Petitioner's alleged "admission" in the COA

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[139] Article 8, Revised Penal Code.

[140] Magsuci vs. Sandiganbayan, G.R. No. L-101545, 3 January 1995.

[141] People v. Pantaleon, G.R. Nos. 158694-96, 13 March 2009.

[142] *Id.*

letter of the supposed authenticity of his and Atty. Cambe's signatures in the attached documents, which purportedly include endorsement letters, deserve scant consideration. In the Pagui Report,[143] Atty. Pagui, whose handwriting expertise was affirmed by no less than this Honorable Court,[144] noted the glaring and marked differences between petitioner's standard signatures and the signature appearing in the confirmation letter.[145]

71. Moreover, Luy himself admitted that he has not seen petitioner write endorsement letters to the DBM or the IAs.[146]

72. Even assuming, although highly disputed, that petitioner wrote the endorsement letters, this act in itself cannot be considered as an "overt act" to *further* the conspiracy of committing plunder as there is nothing irregular or illegal in it. There is nothing in the COA Rules, the General Appropriations Act ("GAA"), the Procurement and other pertinent laws relating to the implementation of the PDAF, which proscribes petitioner from endorsing NGOs. To be sure, the State's witnesses, Delantar and Drapete, even confirmed that there was nothing illegal or wrong with the action of petitioner.[147]

73. Petitioner's endorsement, if at all, is likewise not binding upon the IAs which exercise absolute and independent discretion in the implementation of the PDAF projects, as provided under COA Circular No. 2007-001[148] and National Budget Circular (NBC) Nos. 537[149] and 547.[150]

74. Clearly, the State failed to adduce clear, strong and categorical evidence to show petitioner's "intentional participation in

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[143] *Supra*, Annex "GG."
[144] *See* Republic of the Philippines v. Court of Appeals, et al., G.R. No. 84966, 21 November 1991; Titan Construction Corp. v. David, Sr., G.R. No. 169548, 15 March 2010, 615 SCRA 362.
[145] Annex "GG," pp. 5-6.
[146] *Supra*, note 27.
[147] *Supra*, notes 20, 22.
[148] *Supra*, Annex "JJ."
[149] *Supra*, Annex "II."
[150] *Supra*, Annex "II-1."

the transaction with a view to the furtherance of the common design and purpose."

75. Second, as to Atty. Cambe's supposed designation to follow up, supervise and act on petitioner's behalf for the implementation of petitioner's PDAF funded projects, the State again failed to establish clear, strong and convincing proof of Atty. Cambe's supposed overt act in the furtherance of plunder. There was neither any testimony from the whistleblowers nor clear proof that Atty. Cambe indeed followed up and supervised the supposed projects. On the contrary, all the "whisteblowers" admitted that they themselves conduct the follow ups with the IAs for the release of the PDAF funds. Suñas, in her testimony, in fact named the persons, including herself, tasked to follow up the release of the PDAF funds from the different IAs.[151] Luy likewise admitted conducting follow ups with an NGO after initial negotiations between the latter and Napoles.[152]

76. The presence of Atty. Cambe's purported signatures in the MOAs does not also rise to the level of evident proof required by law to establish his complicity in the criminal design to commit plunder. As above stated, the documents, including the MOAs, attached to the COA letter were found to be forged.

77. Independent handwriting examinations by experts Rogelio G. Azores[153] ("Azores") and Atty. Pagui[154] on Atty. Cambe's purported signatures in the PDAF documents clearly show that the latter's signatures were indeed forged.[155] In fact, the forgery of Atty. Cambe's signatures was even affirmed by the Sandiganbayan in its Resolution dated 1 December 2014,[156] *viz*:

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[151] Annex "T," pp. 40-41, 91, 93-97; Annex "J," pp. 7, 59.

[152] TSN dated 7 August 2014, A.M. Session, p. 47, a copy of which is attached as Annex "KK" hereof.

[153] A copy of Azores' examination reports on Cambe's signatures dated 4 September 2013, 30 August 2013, 27 August 2013, and 23 August 2013 see Annex "HH" series.

[154] A copy of Pagui's examination report on Cambe's signatures dated 5 December 2013, see Annex "HH-5."

[155] Annex "HH-1," p. 5; Annex "HH-2, p. 4; Annex "HH-3," p. 4; Annex "HH-4," p. 3; Annex "HH-5," pp. 8-9.

[156] Resolution dated 1 December 2014

> With regard to accused [Atty.] Cambe's supposed forged signatures on the MOAs and liquidation documents, ***the Court admits that there are dissimilarities and observable strokes in the signatures suggestive that accused [Atty.] Cambe may not be the one who signed on some of these documents.***[157]

78. Yet, the Sandiganbayan still surmised that Atty. Cambe may have consented to the "forgery" of his signature, despite the fact that there is no evidence from which Atty. Cambe's supposed consent to the forgery can be implied or inferred.

79. It bears to stress the following categorical testimonies of Sula and Luy in relation to Atty. Cambe's supposed participation in the implementation of the PDAF-funded projects of petitioner: (a) the name of Atty. Cambe does not appear to be part of those who drafted or prepared the MOAs and other documents needed for the projects of the NGOs;[158] (b) Atty. Cambe was not one of those who made the projects of Napoles;[159] and (c) Atty. Cambe was not one of those who liquidated the projects.[160]

80. Even assuming *arguendo* that Atty. Cambe indeed monitored and supervised the implementation of the PDAF projects and signed the MOAs in relation thereto, these acts taken together still do not clearly and convincingly establish that Atty. Cambe was in agreement with his co-accused in SB-12-CRM-0240 to commit plunder. Certainly, if these alleged inculpatory acts of Atty. Cambe are capable of two or more explanations, one consistent with his innocence and the other consistent with his guilt, the evidence does not fulfill the test of "excluding all reasonable probability of any other conclusion."[161] Absent any clear and convincing evidence of Atty. Cambe's deliberate participation in the alleged conspiracy to commit plunder, as in this case, his innocence should be sustained.

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[157] Emphasis supplied.

[158] Annex "H," p.40-41.

[159] Annex "H," p.41.

[160] *Id.*

[161] Amanquiton v. People of the Philippines, G.R. No. 186080, 14 August 2009.

81. Third, the giving of Napoles and receipt by petitioner of his supposed rebates and commissions were not also adequately proved by the State. Luy, Sula and Suñas categorically admitted that there was no instance that they personally handed or delivered money to petitioner,[162] nor did they see Napoles give or deliver to petitioner his supposed rebates or commissions.[163]

82. Further, Luy, who appears to be in charge of distributing the supposed rebates or commissions of lawmakers allegedly involved in the PDAF scam, testified that: (a) he never gave any amount of money to petitioner; [164] (b) he never saw petitioner go to JLN's office;[165] (c) he never saw Napoles hand any money to petitioner;[166] (d) he never saw petitioner write any endorsement letter to the DBM or to the IAs;[167] (e) he never saw petitioner hand over or give to Napoles any endorsement letter for DBM or IAs;[168] (f) no fund transfer was made by Napoles to petitioner; [169] (g) no manager's check or personal check was issued by Napoles to petitioner; [170] and (h) he never delivered any cash to the office or residence of petitioner.[171]

83. The Sandiganbayan surmised however that petitioner received PDAF monies ***through*** Atty. Cambe, such that whatever money received by Atty. Cambe was also received by petitioner. This is mere speculation and pure guesswork which amounts to grave abuse of discretion by the Sandiganbayan.

84. The Sandiganbayan gravely erred in lending credence to the unfounded and hearsay testimony of the State's witnesses that petitioner received the PDAF monies supposedly given to Atty. Cambe when there was no single instance that the same witnesses

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[162] *Supra,* notes 24, 31, 50, 55.
[163] *Supra,* notes 26, 29, 30, 51, 52, 56, 57.
[164] *Supra,* note 24.
[165] *Supra,* note 25.
[166] *Supra,* note 26.
[167] *Supra,* note 27.
[168] *Supra,* note 28.
[169] *Supra,* note 29.
[170] *Supra,* note 30.
[171] *Supra,* note 31.

personally witnessed Atty. Cambe delivering or handing over the supposed rebates or commissions he received to petitioner. In their testimonies, Luy, Sula and Suñas only knew that petitioner supposedly received the PDAF monies through Napoles.

85. The testimonies of the whistleblowers as well as Luy's "Summary of Rebates" or Disbursement Reports cannot be considered as strong, clear and convincing proof of Atty. Cambe's, much more of petitioner's, receipt of PDAF monies.

86. On the contrary, their credibility is highly questionable given the following glaring inconsistencies: (a) Luy was in Europe from 18 to 29 October 2008,[172] which renders him impossible to meet with Atty. Cambe, and for Atty. Cambe to have received, on behalf of petitioner, the alleged kickback in the amount of P3,000,000.00 on 24 October 2008, as Luy falsely entered in his "Summary of Rebates"[173] and "Disbursement Reports;" (b) Atty. Cambe and his family were in the United States from 6 to 27 May 2008,[174] which renders it impossible for Luy to have given Atty. Cambe the amount of P5,000,000.00 on 9 May 2008, as Luy again falsely indicated in his "Summary of Rebates" and "Disbursement Reports;"[175] (c) Luy categorically admitted that he does not have any proof (other than his perjured testimony) that Atty. Cambe received any amount from him, particularly the cash amounts listed in his "Summary of Rebates;"[176] and (d) Luy did not present any basis for the SARO numbers appearing in his "Summary of Rebates," nor did he present the disbursement vouchers, receipts and other source documents for the entries in the unsigned Disbursement Reports, from which the entries in the "Summary of Rebates" were supposedly based.

87. Also, in the State's examination of bank records of the individuals supposedly involved in the PDAF scam, there was no

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[172] *Supra,* note 71.
[173] *Supra,* note 72.
[174] *Supra,* note 73.
[175] *Supra,* note 74.
[176] *Supra,* note 75.

money found in Atty. Cambe's bank accounts.[177] On the other hand, Atty. Santos testified that there were no fund transfers from the accounts of Napoles and/or JLN Corporation to the account of petitioner or Atty. Cambe.[178] Clearly, it can be inferred that it is highly improbable for Atty. Cambe to have received PDAF monies, much more, petitioner.

88. From the foregoing, it is obvious that the "totality of [the State's] evidence" does not constitute a clear, strong, convincing and categorical proof of the existence of conspiracy among petitioner, Atty. Cambe and Napoles. The overt acts of the supposed conspirators were not clearly and convincingly established for being based on incredible and hearsay testimonies, forged documentary evidence, and incompetent disk drive, among others. The Sandiganbayan gravely abused its discretion by making speculations to paint a picture of conspiracy in this case. It is well-settled that criminal conspiracy must always be founded on facts, not on mere inferences, conjectures and presumptions.[179] Conspiracy cannot be presumed.[180]

89. To be sure, the Sandiganbayan gravely erred in even considering the testimonies of the whistleblowers, themselves co-authors of the crime of plunder, in concluding that petitioner, Atty. Cambe and Napoles conspired to commit plunder. It is a basic rule that before the statements of the whistleblowers may even be considered, there must first be a clear and convincing evidence of the conspiracy, independent of the acts or declarations of said whistleblowers.[181]

90. However, from the records of this case, it is clear that aside from the incredible testimonies of Luy, Sula and Suñas, the State had only presented forged PDAF documents, unreliable and unauthenticated Disbursement Reports and Summary of Rebates, and a tampered disk drive. These evidence, do not, by any stretch of the

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[177] *Supra*, note 47.
[178] Annex "R," p.38.
[179] People v. Absalon, et al., G.R. No. 137750, 25 January 2001.
[180] People v. Paragas, et al., G.R. No. 146308, 18 July 2002.
[181] Section 30, Rule 130, Rules of Court.

imagination, constitute evident proof to show a unity of criminal design to perpetuate the crime of plunder among petitioner, Atty. Cambe and Napoles. Accordingly, the testimonies of Luy, Sula and Suñas as to the supposed overt acts of petitioner, Atty. Cambe, and Napoles can neither be admitted, nor given probative note, much less, considered as a clear, strong, categorical and convincing evidence of conspiracy in this case.

91. Indeed, the rights of a party cannot be prejudiced by an act, declaration, or omission of another.[182] The reason for the rule is that:

> . . . [o]n a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. ***Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him.***[183]

92. Therefore, the statements of the whistleblowers on the alleged conspiracy among petitioner, Atty. Cambe and Napoles should have been disregarded by the Sandiganbayan in ruling on petitioner's Petition for Bail. That the Sandiganbayan relied heavily on these testimonies to build a foundation to reach the level of "presumption great" is a flagrant manifestation of grave abuse of discretion.

93. From the foregoing, it is clear that the State has not presented a clear, strong, convincing and categorical evidence to deny petitioner his constitutional right to bail. The State's evidence has sorely failed to show that petitioner actually conspired with Atty. Cambe and Napoles, among others, to commit the alleged crime of plunder. The records are bereft of evidence that petitioner supposedly repeatedly endorsed Napoles' NGOs and allegedly received commissions or rebates from his PDAF allocations from 2006 to 2010.

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[182] Section 28, Rule 130 of the 1997 Rules of Court.

[183] Tamargo v. Awingan, G.R. No. 177727, 19 January 2010; emphasis supplied.

94. On the contrary, the State's whistleblowers admitted authorship of the forgeries of the signatures in the PDAF documents. The State's witnesses even further admitted that there was no direct proof, as they have not personally seen, even once, petitioner's supposed receipt of rebates or commissions from petitioner's PDAF. As testified by the State's own witnesses, the unsigned and unauthenticated Summary of Rebates, Disbursement Reports and disk drive are of questionable competence and integrity to even merit any consideration. These evidence, as above shown, cannot, by any stretch of the imagination, rise to the level of presumption great, or a clear, categorical, strong and convincing evidence of conspiracy, so as to deny petitioner's right to bail.

Petitioner is entitled to bail as there is no evidence that he is a flight risk following the case of Montano v. Ocampo.[184]

95. It bears stressing that the purpose of bail is twofold – to prevent the punishment of innocent persons, and to compel their presence when required, *viz:*

> Since it is not the purpose of criminal law to confine a person accused of a crime before his conviction, bail, in criminal cases, is intended to combine the administration of justice with the liberty and convenience of the person accused. It is allowed to prevent the punishment of innocent persons, and to enable an accused person to prepare his defense to the charge against him.
>
> ***Another object is to secure the presence of the person charged with crime at his trial, or at any other times when his presence may lawfully be required, and to force him to submit to the jurisdiction and the punishment imposed by the court.***[185]
>
> xxx
>
> A reasonable opportunity to furnish bail ought always be

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[184] G.R. No. L-6352, 29 January 1953; 49 O.G. 1855.
[185] 8 C. J. S. Bail §§ 29-30 (1962).

> given before committing a defendant to jail, and bail will ordinarily be granted unless enlargement of accused will be a menace to the public security.
>
> Even after conviction and pending appeal, the right of a person charged with crime to be released is heavily favored, and normally bail is allowed; and it is only in an unusual case that denial of bail is justified. ***If the attendance of the accused can be assured in such case by requiring bail there is no excuse for denying such relief when it is allowable, and doubt should always be resolved in his favor.***[186]

96. The second purpose of bail, which is to assure the attendance of the accused during trial, is given emphasis in this jurisdiction. Thus, as early as in the case of *Montano,*[187] it is clear that when "the probability of escape x x x, bearing in mind the defendant's official and social standing and his other personal circumstances, seems remote and nil," bail may be granted.

97. Also, in *Montano,* this Honorable Court granted bail to the accused despite having been charged with multiple murder and frustrated murder. This Honorable Court recognized that the investigation therein was likewise done in haste and in a manner akin to what occurred herein, and the official and social standing of the accused precluded the possibility of flight, to wit:

> Brushing aside the charge that the preliminary investigation of this case by the aforesaid Judge was railroaded, the same having been conducted at midnight, a few hours after the complaint was filed, we are of the opinion that, upon the evidence adduced in the application for bail in the lower court, as such evidence is recited lengthily in the present petition and the answer thereto, and extensively analyzed and discussed in the oral argument, there is not such clear showing of guilt as would preclude all reasonable probability of any other conclusion.
>
> ***Exclusion from bail in capital offenses being an exception to the otherwise absolute right guaranteed by the constitution, the***

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[186] 8 C. J. S. *Bail* § 30 (1962).

[187] *Supra.*

> ***natural tendency of the courts has been toward a fair and liberal appreciation, rather than otherwise, of the evidence in the determination of the degree of proof and presumption of guilt necessary to warrant a deprivation of that right.***
>
> ***Besides, to deny bail it is not enough that the evidence of guilt is strong; it must also appear that in case of conviction the defendant's criminal liability would probably call for a capital punishment.*** No clear or conclusive showing before this Court has been made.
>
> ***In the evaluation of the evidence the probability of flight is one other important factor to be taken into account.*** The sole purpose of confining accused in jail before conviction, it has been observed, is to assure his presence at the trial. In other words, if denial of bail is authorized in capital cases, it is only on the theory that the proof being strong, the defendant would flee, if he has the opportunity, rather than face the verdict of the jury. Hence the exception to the fundamental right to be bailed should be applied in direct ratio to the extent of the probability of evasion of prosecution.
>
> ***The possibility of escape in this case, bearing in mind the defendant's official and social standing and his other personal circumstances, seems remote if not nil.***[188]

98. The ruling of this Honorable Court in *Montano* was echoed in *Basco v. Rapatalo,*[189] *viz*:

> A better understanding of bail as an aspect of criminal procedure entails appreciating its nature and purposes. "Bail" is the security required by the court and given by the accused to ensure that the accused appears before the proper court at the scheduled time and place to answer the charges brought against him or her. In theory, the only function of bail is to ensure the appearance of the defendant at the time set for trial. ***The sole purpose of confining the accused in jail before conviction, it has been observed, is to assure his presence at the trial. In other words, if the denial of bail is authorized in capital offenses, it is only in theory that the proof being strong, the defendant would flee, if he has the opportunity, rather than face the verdict of the court. Hence the exception to the fundamental right to be bailed should be applied in direct ratio to***

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[188] Emphasis supplied.

[189] A.M. No. RTJ-96-1335, 5 March 1997.

the extent of probability of evasion of the prosecution. In practice, bail has also been used to prevent the release of an accused who might otherwise be dangerous to society or whom the judges might not want to release.[190]

99. Likewise in *People v. Sandiganbayan and Estrada,*[191] this Honorable Court held that:

> To begin with, Section 13 of Article III (Bill of Rights) of the Constitution mandates:
>
> > 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. xxx
>
> Even if the capital offense charged is bailable owing to the weakness of the evidence of guilt, the right to bail may justifiably still be denied if the probability of escape is great. Here, ever since the promulgation of the assailed Resolutions a little more than four (4) years ago, Jinggoy does not, as determined by Sandiganbayan, seem to be a flight risk. We quote with approval what the graft court wrote in this regard:
>
> > It is not open to serious doubt that the movant [Jinggoy] has, in general, been consistently respectful of the Court and its processes. He has not ominously shown, by word or by deed, that he is of such a flight risk that would necessitate his continued incarceration. Bearing in mind his conduct, social standing and his other personal circumstances, the possibility of his escape in this case seems remote if not nil.
>
> The likelihood of escape on the part individual respondent is now almost nil, given his election on May 10, 2004, as Senator of the Republic of the Philippines. ***The Court takes stock of the fact that those who usually jump bail are shadowy characters mindless of their reputation in the eyes of the people for as long as they can flee from the retribution of justice. On the other hand, those with a reputation and a respectable name to protect and preserve are very unlikely to jump bail. The Court, to be sure, cannot accept any suggestion that someone who has a popular mandate to serve as***

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[190] Emphasis supplied.

[191] G.R. No. 158754, 10 August 2007.

Senator is harboring any plan to give up his Senate seat in exchange for becoming a fugitive from justice.[192]

100. Like in *Montano* and *Estrada,* petitioner does not have any propensity to flee. Petitioner's voluntary surrender, constant attendance during hearings, and participation during the proceedings in this case indicate his adherence to and respect for court processes. Furthermore, given his name and stature as an incumbent Senator of the Philippines, petitioner's escape from Philippine jurisdiction would not only be remote, but would amount to an abandonment of the office that he has duly sworn to serve – which evidently he has no intention of doing. Thus, petitioner deserves to be entitled to bail.

101. ***To be sure, petitioner's continued detention despite the utter insufficiency of evidence of his guilt and the impossibility of flight, becomes a penalty rather than a mode of ensuring his presence at trial.***

102. Thus, petitioner most respectfully beseeches this Honorable Court's intervention to rectify the Sandiganbayan's grave abuse of discretion and serious error, in both fact and law, in denying petitioner's application for bail.

RELIEF

WHEREFORE, petitioner respectfully prays that this Honorable Court give due course to the petition and after proceedings duly had, to render judgment: (a) nullifying and setting aside the Sandiganbayan, First Division's Resolutions dated 1 December 2014 and 26 March 2015; and (b) ordering the Sandiganbayan, First Division to forthwith order the admission of petitioner to bail.

Other reliefs, just or equitable under the premises are likewise prayed for.

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[192] Emphasis supplied.

Makati City for the City of Manila, 1 June 2015.

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VERIFICATION AND CERTIFICATION

I, RAMON "BONG" B. REVILLA, JR., of legal age, Filipino and with current address at PNP Custodial Center, Camp Crame, Quezon City, under oath, state that:

1. I am the petitioner in this case.

2. I caused the preparation of the foregoing Petition and have read the contents thereof, all of which are true and correct, of my own personal knowledge or based on authentic records.

3. I hereby certify under oath that I have not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and, to the best of my knowledge, no such other action or claim is pending therein. If I should hereafter learn that the same or similar action or claim has been filed or is pending, I undertake to report such fact to this Honorable Court within five (5) days therefrom.

RAMON "BONG" B. REVILLA, JR.
Affiant

REPUBLIC OF THE PHILPPINES)
QUEZON CITY, METRO MANILA) S.S.

JUN 0 1 2015

SUBSCRIBED AND SWORN to before me this ___ day of June 2015 in Quezon City, affiant who is personally known to me and/or has satisfactorily proven his identity through competent evidence, exhibiting to me his Passport No. DE0010420 expiring on 3 June 2019 and his [illegible].

Doc. No. 1;
Page No. 4;
Book No. II;
Series of 2015.

REPUBLIC OF THE PHILIPPINES)
MAKATI CITY) S.S.

WRITTEN EXPLANATION AND
AFFIDAVIT OF SERVICE

The undersigned messengerial staff of ESGUERRA & BLANCO LAW OFFICES, with office address at 4th Floor, S & L Building, dela Rosa corner Esteban Streets, Legaspi Village, Makati City, hereby states under oath:

1. I am assigned to deliver, serve and file papers, pleadings and other documents for the above law office. However, considering the number of pleadings and other papers which require personal delivery, it is impracticable for the affiant to serve and file them all by hand.

2. Upon instruction of Atty. Reody Anthony M. Balisi, affiant served today the pleading described below:

Pleading:	PETITION dated 01 June 2015.
Case Title:	People of the Philippines & Sandiganbayan 1st Division vs Ramon "Bong" B. Revilla,
Civil Case No.:	G.R. No. Jr., et al.
Venue :	Supreme Court - Manila

3. The pleading described above was served personally or by registered mail to:

Name and Address		
[X]	Personal Delivery	
1.	Supreme Court - Manila	
2.	Office of the Solicitor General	
3.	Ancheta & Associates	
[X]	by Registered Mail	Registry Receipt No.
1.	Sandiganbayan 1st Division	
2.	Office of the Special Prosecutor	
3.	David Cui-David Buenaventura and Ang Law Offices	

(Please see attached list for additional parties)

4. The registry receipts issued by the mailing office are attached to the original pleading on file with this court.

Jonathan B. Hermosa
Affiant's Name and Signature

JUL 15 2015

SUBSCRIBED AND SWORN to before me this ____ day of _____ 2015 at Makati City, affiant, who is personally known to me, and has satisfactorily proven to me his identity through competent evidence, exhibiting his Community Tax Certificate No. 02468097 issued on 17 February 2015 at Makati City and his SSS ID No. 03-9476966-2.

Doc. No. 931;
Page No. 100;
Book No. V;
Series of 2015.

ANNIEFAIR A. AUSAN
Commission No. M-160
Notary Public – Makati City
Until December 31, 2015
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MAKATI CITY, PHILIPPINES
NOTARY PUBLIC
ROLL NO. 62565
ANNIEFAIR A. AUSAN