

ATTY. EDWARD SERAPIO, PETITIONER, VS. SANDIGANBAYAN (THIRD DIVISION), PEOPLE OF THE PHILIPPINES, AND PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL LEANDRO MENDOZA, RESPONDENTS.*G.R. No. 148468. January 28, 2003*

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-148468/>**CALLEJO, SR., J.:**

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

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

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

In the latter part of the year 2000, Gov. Singson publicly accused then President Joseph E. Estrada and his cohorts of engaging in several illegal activities, including its operation on the illegal numbers game known as jueteng. This triggered the filing with the Office of the Ombudsman of several criminal complaints against Joseph Estrada, Jinggoy Estrada and petitioner, together with other persons. Among such complaints were: Volunteers Against Crime and Corruption, versus Joseph Ejercito Estrada, Edward Serapio, et al., docketed as OMB Crim. Case No. 0-00-1754; Graft Free Philippines Foundation, Inc., versus Joseph Ejercito Estrada, Edward Serapio, et al., docketed as OMB Crim. Case No. 0-00-1755; and Leonardo De Vera, Romeo T. Capulong and Dennis B. Funa, versus Joseph Estrada, Yolanda Ricaforte, Edward Serapio, Raul De Guzman, Danilo Reyes and Mila Reforma, docketed as OMB Crim. Case No. 0-00-1757.

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

On April 4, 2001, the Ombudsman filed with the Sandiganbayan several Informations against former President

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

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

(a)

by receiving OR collecting, directly or indirectly, on SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (P545,000,000.00), MORE OR LESS, FROM ILLEGAL GAMBLING IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connivance with co-accused CHARLIE ‘ATONG’ ANG, Jose ‘Jinggoy’ Estrada, Yolanda T. Ricaforte, Edward Serapio, AND JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;

(b)

by DIVERTING, RECEIVING, misappropriating, converting OR misusing DIRECTLY OR INDIRECTLY, for HIS OR THEIR PERSONAL gain and benefit public fund in the amount of ONE HUNDRED THIRTY MILLION PESOS (P130,000,000.00), more or less, representing a portion of the TWO HUNDRED MILLION PESOS [P200,000,000.00]) tobacco excise tax share allocated for the Province of Ilocos Sur under R.A. No. 7171, BY HIMSELF AND/OR in CONNIVANCE with co-accused Charlie ‘Atong’ Ang, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a. Delia Rajas, AND OTHER JOHN DOES AND JANE DOES;

(c)

by directing, ordering and compelling FOR HIS PERSONAL GAIN AND BENEFIT, the Government Service Insurance System (GSIS) TO PURCHASE, 351,878,000 SHARES OF STOCKS, MORE OR LESS, and the Social Security System (SSS), 329,855,000 SHARES OF STOCK, MORE OR LESS, OF THE BELLE CORPORATION IN THE AMOUNT OF MORE OR LESS ONE BILLION ONE HUNDRED TWO MILLION NINE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED SEVEN PESOS AND FIFTY CENTAVOS [P1,102,965,607.50] AND MORE OR LESS SEVEN HUNDRED FORTY FOUR MILLION SIX HUNDRED TWELVE THOUSAND AND FOUR HUNDRED FIFTY PESOS [P744,612,450.00], RESPECTIVELY, OR A TOTAL OR MORE OR LESS ONE BILLION EIGHT HUNDRED FORTY SEVEN

MILLION FIVE HUNDRED SEVENTY EIGHT THOUSAND FIFTY SEVEN PESOS AND FIFTY CENTAVOS [P1,847,578,057.50]; AND BY COLLECTING OR RECEIVING, DIRECTLY OR INDIRECTLY, BY HIMSELF AND/OR IN CONNIVANCE WITH JOHN DOES AND JANE DOES, COMMISSIONS OR PERCENTAGES OF SHARES OF STOCK IN THE AMOUNT OF ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND PESOS [189,700,000.00] MORE OR LESS, FROM THE BELLE CORPORATION WHICH BECAME PART OF THE DEPOSIT IN THE EQUITABLE-PCI BANK UNDER THE ACCOUNT NAME "JOSE VELARDE";

(d)

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

CONTRARY TO LAW.”[1]

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

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

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

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

During the hearing on May 4, 2001 on petitioner’s Urgent Petition for Bail, the prosecution moved for the resetting of the arraignment of the accused earlier than the June 27, 2001 schedule. However, the Sandiganbayan denied the motion of the prosecution and issued an order declaring that the petition for bail can and should be heard before petitioner’s arraignment on June 27, 2001 and even before the other accused in Criminal Case No. 26558 filed their respective petitions for bail. Accordingly, the Sandiganbayan set the hearing for the reception of evidence on petitioner’s petition for bail on May 21 to 25, 2001.

On May 17, 2001, four days before the hearing on petitioner’s petition for bail, the Ombudsman filed an urgent motion for early arraignment of Joseph Estrada, Jinggoy Estrada and petitioner and a motion for joint bail

hearings of Joseph Estrada, Jinggoy Estrada and petitioner. The following day, petitioner filed a manifestation questioning the propriety of including Joseph Estrada and Jinggoy Estrada in the hearing on his (petitioner's) petition for bail.

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

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

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

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

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

The Sandiganbayan reset the arraignment of accused and the hearing on the petition for bail of petitioner in Criminal Case No. 26558 for July 10, 2001 to enable it to resolve the pending incidents and the motion to quash of petitioner. However, even before the Sandiganbayan could resolve the pending motions of petitioner and the prosecution, petitioner filed with this Court on June 29, 2001 a Petition for Habeas Corpus and Certiorari, docketed as G.R. No. 148468, praying that the Court declare void the questioned orders, resolutions and actions of the Sandiganbayan on his claim that he was thereby effectively denied of his right to due process. Petitioner likewise prayed for the issuance of a writ of habeas corpus; that the People be declared to have waived their right to present evidence in opposition to his petition for bail; and, premised on the failure of the People to adduce strong evidence of petitioner's guilt of plunder, that he be granted provisional liberty on bail after due proceedings.[11]

Meanwhile, on June 28, 2001, Jose "Jinggoy" Estrada filed with the Sandiganbayan a motion praying that said

court resolve his motion to fix his bail.

On July 9, 2001, the Sandiganbayan issued a Resolution denying petitioner's motion to quash the amended Information. Petitioner, through counsel, received on said date a copy of said resolution.[12] The motion to fix bail filed by Jose "Jinggoy" Estrada was also resolved by the Sandiganbayan.

On July 10, 2001, just before his arraignment in Criminal Case No. 26558, petitioner manifested to the Sandiganbayan that he was going to file a motion for reconsideration of the July 9, 2001 Resolution denying his motion to quash and for the deferment of his arraignment. The Sandiganbayan, however, declared that there was no provision in the Rules of Court or in the Sandiganbayan's rules granting the right to petitioner to file a motion for the reconsideration of an interlocutory order issued by it and ordered petitioner to orally argue his motion for reconsideration. When petitioner refused, the Sandiganbayan proceeded with his arraignment. Petitioner refused to plead, impelling the court to enter a plea of not guilty for him.

On July 20, 2001, petitioner filed with the Court a Petition for Certiorari, docketed as G.R. No. 148769, alleging that the Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its July 9, 2001 Resolution denying his motion to quash, notwithstanding the fact that material inculpatory allegations of the amended Information against him do not constitute the crime of plunder; and that he is charged, under the said amended Information, for more than one offense. Jose "Jinggoy" Estrada likewise filed petition for certiorari with the Court docketed as G.R. No. 148965 for the nullification of a resolution of the Sandiganbayan denying his motion to fix bail.

On August 9, 2001, petitioner filed with the Court another Petition for Certiorari, docketed as G.R. No. 149116, assailing the Sandiganbayan's Resolution dated 31 May 2001 which denied his April 6, 2001 Urgent Omnibus Motion and its June 25, 2001 Resolution denying his motion for reconsideration of its May 31, 2001 Resolution.

Re: G.R. No. 148769

Petitioner avers that:

THE SANDIGANBAYAN ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN DENYING PETITIONER SERAPIO'S MOTION TO QUASH NOTWITHSTANDING THAT –

I

THE FACTS ALLEGED IN THE AMENDED INFORMATION AS AGAINST PETITIONER SERAPIO DO NOT CONSTITUTE THE CRIME OF PLUNDER.

- The Amended Information, as against petitioner Serapio, does not allege a combination or series of overt or criminal acts constitutive of plunder.
- The Amended Information, as against petitioner Serapio, does not allege a pattern of criminal acts indicative of an overall unlawful scheme or conspiracy.
- The money described in paragraph (a) of the Amended Information and alleged to have been illegally received or collected does not constitute 'ill-gotten wealth' as defined in Section 1(d), Republic Act No. 7080, as amended.

II

THE AMENDED INFORMATION CHARGES MORE THAN ONE OFFENSE.”[13]

Petitioner asserts that, on the face of the amended Information, he is charged with plunder only in paragraph (a)

which reads:

“(a)

by receiving OR collecting, directly or indirectly, on SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (P545,000,000.00), MORE OR LESS, FROM ILLEGAL GAMBLING IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connivance with co-accused CHARLIE ‘ATONG’ ANG, Jose ‘Jinggoy’ Estrada, Yolanda T. Ricaforte, Edward Serapio, AND JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;”[14]

Petitioner asserts that there is no allegation in paragraph (a) of the amended Information of a “combination or series of overt or criminal acts” constituting plunder as described in Section 1(d) of R.A. 7080 as amended. Neither does the amended Information allege “a pattern of criminal acts.” He avers that his single act of toleration or protection of illegal gambling impelled by a single criminal resolution does not constitute the requisite “combination or series of acts” for plunder. He further claims that the consideration consisting of gifts, percentages or kickbacks in furtherance of said resolution turned over to and received by former President Joseph E. Estrada “on several occasions” does not cure the defect in the amended information. Petitioner insists that on the face of the amended Information he is charged only with bribery or illegal gambling and not of plunder.

Petitioner argues that the P540 million which forms part of the P4,097,804,173.17 amassed by former President Joseph E. Estrada in confabulation with his co-accused is not ill-gotten wealth as defined in Section 1(d) of R.A. 7080.

We do not agree with petitioner. Section 6, Rule 110 of the Revised Rules of Criminal Procedure provides that:

“Sec. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused, the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When the offense was committed by more than one person, all of them shall be included in the complaint or information.”[15]

The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the elements of the crime charged. What facts and circumstances are necessary to be included therein must be determined by reference to the definition and elements of the specific crimes. The purpose of the requirement of alleging all the elements of the crime in the Information is to inform an accused of the nature of the accusation against him so as to enable him to suitably prepare for his defense.[16] Another purpose is to enable accused, if found guilty, to plead his conviction in a subsequent prosecution for the same offense.[17] The use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient.[18]

In this case, the amended Information specifically alleges that all the accused, including petitioner, connived and conspired with former President Joseph E. Estrada to commit plunder “through any or a combination or a series of overt or criminal acts or similar schemes or means.” And in paragraph (a) of the amended Information, petitioner and his co-accused are charged with receiving or collecting, directly or indirectly, on several instances money in the aggregate amount of P545,000,000.00. In *Jose “Jinggoy” Estrada vs. Sandiganbayan (Third Division), et al.*, [19] we held that the word “series” is synonymous with the clause “on several instances”; it refers to a

repetition of the same predicate act in any of the items in Section 1(d) of the law. We further held that the word “combination” contemplates the commission of at least any two different predicate acts in any of the said items. We ruled that “plainly, subparagraph (a) of the amended information charges accused therein, including petitioner, with plunder committed by a series of the same predicate act under Section 1(d)(2) of the law” and that:

“x x x Sub-paragraph (a) alleged the predicate act of receiving, on several instances, money from illegal gambling, in consideration of toleration or protection of illegal gambling, and expressly names petitioner as one of those who conspired with former President Estrada in committing the offense. This predicate act corresponds with the offense described in item [2] of the enumeration in Section 1(d) of R.A. No. 7080. x x x.”[20]

It is not necessary to allege in the amended Information a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy because as Section 3 of R.A. 7080 specifically provides, the same is evidentiary and the general rule is that matters of evidence need not be alleged in the Information.[21]

The Court also ruled in Jose “Jinggoy” Estrada vs. Sandiganbayan[22] that the aggregate amount of P4,097,804,173.17 inclusive of the P545 million alleged in paragraph (a) of the amended information is ill-gotten wealth as contemplated in Section 1, paragraph 1(d) of Republic Act 7080, as amended, and that all the accused in paragraph (a) to (d) of the amended information conspired and confederated with former President Estrada to enable the latter to amass, accumulate or acquire ill-gotten wealth in the aggregate amount of P4,097,804,173.17.

Under the amended Information, all the accused, including petitioner, are charged of having conspired and confabulated together in committing plunder. When two or more persons conspire to commit a crime, each is responsible for all the acts of others. In contemplation of law, the act of the conspirator is the act of each of them.[23] Conspirators are one man, they breathe one breath, they speak one voice, they wield one arm and the law says that the acts, words and declarations of each, while in the pursuit of the common design, are the acts, words and declarations of all.[24]

Petitioner asserts that he is charged under the amended Information of bribery and illegal gambling and others. The Sandiganbayan, for its part, held that petitioner is not charged with the predicate acts of bribery and illegal gambling but is charged only with one crime that of plunder:

“THE ISSUE OF WHETHER OR NOT THE INFORMATION
CHARGES MORE THAN ONE OFFENSE

According to the accused Estradas and Edward Serapio the information charges more than one offense, namely, bribery (Article 210 of the Revised Penal Code), malversation of public funds or property (Article 217, Revised Penal Code) and violations of Sec. 3(e) of Republic Act (RA No. 3019) and Section 7(d) of RA 6713.

This contention is patently unmeritorious. The acts alleged in the information are not charged as separate offenses but as predicate acts of the crime of plunder.

It should be stressed that the Anti-Plunder law specifically Section 1(d) thereof does not make any express reference to any specific provision of laws, other than R.A. No. 7080, as amended, which coincidentally may penalize as a separate crime any of the overt or criminal acts enumerated therein. The said acts which form part of the combination or series of act are described in their generic sense. Thus, aside from ‘malversation’ of public funds, the law also uses the generic terms ‘misappropriation’, ‘conversion’ or ‘misuse’ of said fund. The fact that the acts involved may likewise be penalized under other laws is incidental. The said acts are mentioned only as predicate acts of the crime of plunder and the allegations relative thereto are not to be taken or to be understood as allegations charging separate criminal offenses punished under the Revised Penal Code,

the Anti-Graft and Corrupt Practices Act and Code of Conduct and Ethical Standards for Public Officials and Employees.”[25]

This Court agrees with the Sandiganbayan. It is clear on the face of the amended Information that petitioner and his co-accused are charged only with one crime of plunder and not with the predicate acts or crimes of plunder. It bears stressing that the predicate acts merely constitute acts of plunder and are not crimes separate and independent of the crime of plunder. Resultantly then, the petition is dismissed.

Re: G.R. No. 149116

Petitioner assails the May 31, 2001 Joint Resolution of the Sandiganbayan denying his April 4, 2001 Urgent Omnibus Motion contending that:

“GROUNDS FOR THE PETITION

THE SANDIGANBAYAN ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN SUMMARILY DENYING PETITIONER SERAPIO’S URGENT OMNIBUS MOTION AND MOTION FOR RECONSIDERATION (RE: RESOLUTION DATED 31 MAY 2001), NOTWITHSTANDING THAT THE OMBUDSMAN HAD TOTALLY DISREGARDED EXCULPATORY EVIDENCE AND COMMITTED GRAVE AND MANIFEST ERRORS OF LAW SERIOUSLY PREJUDICIAL TO THE RIGHTS AND INTERESTS OF PETITIONER SERAPIO, AND THERE IS NO PROBABLE CAUSE TO SUPPORT AN INDICTMENT FOR PLUNDER AS AGAINST PETITIONER SERAPIO.”[26]

Petitioner claims that the Sandiganbayan committed grave abuse of discretion in denying his omnibus motion to hold in abeyance the issuance of a warrant for his arrest as well as the proceedings in Criminal Case No. 26558; to conduct a determination of probable cause; and to direct the Ombudsman to conduct a reinvestigation of the charges him. Petitioner asseverates that the Ombudsman had totally disregarded exculpatory evidence and committed grave abuse of discretion in charging him with plunder. He further argues that there exists no probable cause to support an indictment for plunder as against him.[27]

Petitioner points out that the joint resolution of the Ombudsman does not even mention him in relation to the collection and receipt of jueteng money which started in 1998[28] and that the Ombudsman inexplicably arrived at the conclusion that the Erap Muslim Youth Foundation was a money laundering front organization put up by Joseph Estrada, assisted by petitioner, even though the latter presented evidence that said Foundation is a bona fide and legitimate private foundation.[29] More importantly, he claims, said joint resolution does not indicate that he knew that the P200 million he received for the Foundation came from jueteng.[30]

Petitioner insists that he cannot be charged with plunder since: (1) the P200 million he received does not constitute “ill-gotten wealth” as defined in Section 1(d) of R.A. No. 7080;[31] (2) there is no evidence linking him to the collection and receipt of jueteng money;[32] (3) there was no showing that petitioner participated in a pattern of criminal acts indicative of an overall unlawful scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, or that his act of receiving the P200 million constitutes an overt criminal act of plunder.[33]

Petitioner argues further that his motion for reinvestigation is premised on the absolute lack of evidence to support a finding of probable cause for plunder as against him,[34] and hence he should be spared from the inconvenience, burden and expense of a public trial.[35]

Petitioner also avers that the discretion of government prosecutors is not beyond judicial scrutiny. He asserts that while this Court does not ordinarily look into the existence of probable cause to charge a person for an offense in

a given case, it may do so in exceptional circumstances, which are present in this case: (1) to afford adequate protection to the constitutional rights of the accused; (2) for the orderly administration of justice or to avoid oppression; (3) when the acts of the officer are without or in excess of authority; and (4) where the charges are manifestly false and motivated by the lust for vengeance.[36] Petitioner claims that he raised proper grounds for a reinvestigation by asserting that in issuing the questioned joint resolution, the Ombudsman disregarded evidence exculpating petitioner from the charge of plunder and committed errors of law or irregularities which have been prejudicial to his interest.[37] He also states that during the joint preliminary investigations for the various charges against Joseph Estrada and his associates, of which the plunder charge was only one of the eight charges against Estrada et al., he was not furnished with copies of the other complaints nor given the opportunity to refute the evidence presented in relation to the other seven cases, even though the evidence presented therein were also used against him, although he was only charged in the plunder case.[38]

The People maintain that the Sandiganbayan committed no grave abuse of discretion in denying petitioner's omnibus motion. They assert that since the Ombudsman found probable cause to charge petitioner with the crime of plunder, the Sandiganbayan is bound to assume jurisdiction over the case and to proceed to try the same. They further argue that "a finding of probable cause is merely preliminary and prefatory of the eventual determination of guilt or innocence of the accused," and that petitioner still has the chance to interpose his defenses in a full blown trial where his guilt or innocence may finally be determined.[39]

The People also point out that the Sandiganbayan did not commit grave abuse of discretion in denying petitioner's omnibus motion asking for, among others, a reinvestigation by the Ombudsman, because his motion for reconsideration of the Ombudsman's joint resolution did not raise the grounds of either newly discovered evidence, or errors of law or irregularities, which under Republic Act No. 6770 are the only grounds upon which a motion for reconsideration may be filed.[40]

The People likewise insist that there exists probable cause to charge petitioner with plunder as a co-conspirator of Joseph Estrada.[41]

This Court does not agree with petitioner.

Case law has it that the Court does not interfere with the Ombudsman's discretion in the conduct of preliminary investigations. Thus, in *Raro vs. Sandiganbayan*[42], the Court ruled:

"x x x. In the performance of his task to determine probable cause, the Ombudsman's discretion is paramount. Thus, in *Camanag vs. Guerrero*, this Court said:

'x x x. (S)uffice it to state that this Court has adopted a policy of non-interference in the conduct of preliminary investigations, and leaves to the investigating prosecutor sufficient latitude of discretion in the exercise of determination of what constitutes sufficient evidence as will establish 'probable cause' for filing of information against the supposed offender."

In *Cruz, Jr. vs. People*,[43] the Court ruled thus:

"Furthermore, the Ombudsman's findings are essentially factual in nature. Accordingly, in assailing said findings on the contention that the Ombudsman committed a grave abuse of discretion in holding that petitioner is liable for estafa through falsification of public documents, petitioner is clearly raising questions of fact here. His arguments are anchored on the propriety or error in the Ombudsman's appreciation of facts. Petitioner cannot be unaware that the Supreme Court is not a trier of facts, more so in the consideration of the extraordinary writ of certiorari where neither question of fact nor even of law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion. Insofar as the third issue is concerned, we find that no grave abuse of discretion has been committed by respondents which would warrant the granting of the writ of certiorari."

Petitioner is burdened to allege and establish that the Sandiganbayan and the Ombudsman for that matter committed grave abuse of discretion in issuing their resolution and joint resolution, respectively. Petitioner failed to discharge his burden. Indeed, the Court finds no grave abuse of discretion on the part of the Sandiganbayan and the Ombudsman in finding probable cause against petitioner for plunder. Neither did the Sandiganbayan abuse its discretion in denying petitioner's motion for reinvestigation of the charges against him in the amended Information. In its Resolution of April 25, 2001, the Sandiganbayan affirmed the finding of the Ombudsman that probable cause exists against petitioner and his co-accused for the crime of plunder, thus:

“In the light of the foregoing and considering the allegations of the Amended Information dated 18 April 2001 charging the accused with the offense of PLUNDER and examining carefully the evidence submitted in support thereof consisting of the affidavits and sworn statements and testimonies of prosecution witnesses and several other pieces of documentary evidence, as well as the respective counter-affidavits of accused former President Joseph Estrada dated March 20, 2001, Jose “Jinggoy” Pimentel Estrada dated February 20, 2001, Yolanda T. Ricaforte dated January 21, 2001 and Edward S. Serapio dated February 21, 2001, the Court finds and so holds that probable cause for the offense of PLUNDER exists to justify issuance of warrants of arrest of accused former President Joseph Ejercito Estrada, Mayor Jose “Jinggoy” Estrada, Charlie “Atong” Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, John Doe. a.k.a. Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a Delia Rajas.”[44]

Likewise, in its Resolution dated May 31, 2001 of petitioner's omnibus motion, the Sandiganbayan noted that a preliminary investigation was fully conducted in accordance with Rule II, Administrative Order No. 7 of the Office of the Ombudsman, pursuant to Sections 18, 23 and 27 of Republic Act No. 6770 (The Ombudsman Act of 1989); and that all the basic complaints and evidence in support thereof were served upon all the accused.[45] It was in light of such findings that the Sandiganbayan held that there was no basis for the allegation that accused therein (including petitioner) were deprived of the right to seek a reconsideration of the Ombudsman's Resolution dated April 4, 2001 finding probable cause to charge them with plunder after the conduct of preliminary investigation in connection therewith. In addition, the Sandiganbayan pointed out that petitioner filed a motion for reconsideration of the Ombudsman's resolution, but failed to show in his motion that there were newly discovered evidence, or that the preliminary investigation was tainted by errors of law or irregularities, which are the only grounds for which a reconsideration of the Ombudsman's resolution may be granted.[46]

It bears stressing that the right to a preliminary investigation is not a constitutional right, but is merely a right conferred by statute.[47] The absence of a preliminary investigation does not impair the validity of the Information or otherwise render the same defective and neither does it affect the jurisdiction of the court over the case or constitute a ground for quashing the Information.[48] If the lack of a preliminary investigation does not render the Information invalid nor affect the jurisdiction of the court over the case, with more reason can it be said that the denial of a motion for reinvestigation cannot invalidate the Information or oust the court of its jurisdiction over the case. Neither can it be said that petitioner had been deprived of due process. He was afforded the opportunity to refute the charges against him during the preliminary investigation.

The purpose of a preliminary investigation is merely to determine whether a crime has been committed and whether there is probable cause to believe that the person accused of the crime is probably guilty thereof and should be held for trial.[49] As the Court held in *Webb vs. De Leon*, “[a] finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely, not on evidence establishing absolute certainty of guilt.”[50]

Absent any showing of arbitrariness on the part of the prosecutor or any other officer authorized to conduct

preliminary investigation, courts as a rule must defer to said officer's finding and determination of probable cause, since the determination of the existence of probable cause is the function of the prosecutor.[51] The Court agrees with the Sandiganbayan that petitioner failed to establish that the preliminary investigation conducted by the Ombudsman was tainted with irregularity or that its findings stated in the joint resolution dated April 4, 2001 are not supported by the facts, and that a reinvestigation was necessary.

Certiorari will not lie to invalidate the Sandiganbayan's resolution denying petitioner's motion for reinvestigation since there is nothing to substantiate petitioner's claim that it gravely abused its discretion in ruling that there was no need to conduct a reinvestigation of the case.[52]

The ruling in *Rolito Go vs. Court of Appeals*[53] that an accused shall not be deemed to have waived his right to ask for a preliminary investigation after he had been arraigned over his objection and despite his insistence on the conduct of said investigation prior to trial on the merits does not apply in the instant case because petitioner merely prayed for a reinvestigation on the ground of a newly-discovered evidence. Irrefragably, a preliminary investigation had been conducted by the Ombudsman prior to the filing of the amended Information, and that petitioner had participated therein by filing his counter-affidavit. Furthermore, the Sandiganbayan had already denied his motion for reinvestigation as well as his motion for reconsideration thereon prior to his arraignment.[54] In sum then, the petition is dismissed.

Re: G.R. No. 148468

As synthesized by the Court from the petition and the pleadings of the parties, the issues for resolution are: (1) Whether or not petitioner should first be arraigned before hearings of his petition for bail may be conducted; (2) Whether petitioner may file a motion to quash the amended Information during the pendency of his petition for bail; (3) Whether a joint hearing of the petition for bail of petitioner and those of the other accused in Criminal Case No. 26558 is mandatory; (4) Whether the People waived their right to adduce evidence in opposition to the petition for bail of petitioner and failed to adduce strong evidence of guilt of petitioner for the crime charged; and (5) Whether petitioner was deprived of his right to due process in Criminal Case No. 26558 and should thus be released from detention via a writ of habeas corpus.

On the first issue, petitioner contends that the Sandiganbayan committed a grave abuse of its discretion amounting to excess or lack of jurisdiction when it deferred the hearing of his petition for bail to July 10, 2001, arraigned him on said date and entered a plea of not guilty for him when he refused to be arraigned. He insists that the Rules on Criminal Procedure, as amended, does not require that he be arraigned first prior to the conduct of bail hearings since the latter can stand alone and must, of necessity, be heard immediately.[55] Petitioner maintains that his arraignment before the bail hearings are set is not necessary since he would not plead guilty to the offense charged, as is evident in his earlier statements insisting on his innocence during the Senate investigation of the jueteng scandal and the preliminary investigation before the Ombudsman.[56] Neither would the prosecution be prejudiced even if it would present all its evidence before his arraignment because, under the Revised Penal Code, a voluntary confession of guilt is mitigating only if made prior to the presentation of evidence for the prosecution,[57] and petitioner admitted that he cannot repudiate the evidence or proceedings taken during the bail hearings because Rule 114, Section 8 of the Revised Rules of Court expressly provides that evidence present during bail hearings are automatically reproduced during the trial.[58] Petitioner likewise assures the prosecution that he is willing to be arraigned prior to the posting of a bail bond should he be granted bail.[59]

The People insist that arraignment is necessary before bail hearings may be commenced, because it is only upon arraignment that the issues are joined. The People stress that it is only when an accused pleads not guilty may he

file a petition for bail and if he pleads guilty to the charge, there would be no more need for him to file said petition. Moreover, since it is during arraignment that the accused is first informed of the precise charge against him, he must be arraigned prior to the bail hearings to prevent him from later assailing the validity of the bail hearings on the ground that he was not properly informed of the charge against him, especially considering that, under Section 8, Rule 114 of the Revised Rules of Court, evidence presented during such proceedings are considered automatically reproduced at the trial.[60] Likewise, the arraignment of accused prior to bail hearings diminishes the possibility of an accused's flight from the jurisdiction of the Sandiganbayan because trial in absentia may be had only if an accused escapes after he has been arraigned.[61] The People also contend that the conduct of bail hearings prior to arraignment would extend to an accused the undeserved privilege of being appraised of the prosecution's evidence before he pleads guilty for purposes of penalty reduction.[62]

Although petitioner had already been arraigned on July 10, 2001 and a plea of not guilty had been entered by the Sandiganbayan on his behalf, thereby rendering the issue as to whether an arraignment is necessary before the conduct of bail hearings in petitioner's case moot, the Court takes this opportunity to discuss the controlling precepts thereon pursuant to its symbolic function of educating the bench and bar.[63]

The contention of petitioner is well-taken. The arraignment of an accused is not a prerequisite to the conduct of hearings on his petition for bail. A person is allowed to petition for bail as soon as he is deprived of his liberty by virtue of his arrest or voluntary surrender.[64] An accused need not wait for his arraignment before filing a petition for bail.

In *Lavides vs. Court of Appeals*, [65] this Court ruled on the issue of whether an accused must first be arraigned before he may be granted bail. *Lavides* involved an accused charged with violation of Section 5(b) Republic Act No. 7610 (The Special Protection of Children Against Abuse, Exploitation and Discrimination Act), an offense punishable by reclusion temporal in its medium period to reclusion perpetua. The accused therein assailed, inter alia, the trial court's imposition of the condition that he should first be arraigned before he is allowed to post bail. We held therein that "in cases where it is authorized, bail should be granted before arraignment, otherwise the accused may be precluded from filing a motion to quash." [66]

However, the foregoing pronouncement should not be taken to mean that the hearing on a petition for bail should at all times precede arraignment, because the rule is that a person deprived of his liberty by virtue of his arrest or voluntary surrender may apply for bail as soon as he is deprived of his liberty, even before a complaint or information is filed against him.[67] The Court's pronouncement in *Lavides* should be understood in light of the fact that the accused in said case filed a petition for bail as well as a motion to quash the informations filed against him. Hence, we explained therein that to condition the grant of bail to an accused on his arraignment would be to place him in a position where he has to choose between (1) filing a motion to quash and thus delay his release on bail because until his motion to quash can be resolved, his arraignment cannot be held, and (2) foregoing the filing of a motion to quash so that he can be arraigned at once and thereafter be released on bail. This would undermine his constitutional right not to be put on trial except upon a valid complaint or Information sufficient to charge him with a crime and his right to bail.[68]

It is therefore not necessary that an accused be first arraigned before the conduct of hearings on his application for bail. For when bail is a matter of right, an accused may apply for and be granted bail even prior to arraignment. The ruling in *Lavides* also implies that an application for bail in a case involving an offense punishable by reclusion perpetua to death may also be heard even before an accused is arraigned. Further, if the court finds in such case that the accused is entitled to bail because the evidence against him is not strong, he may be granted provisional liberty even prior to arraignment; for in such a situation, bail would be "authorized" under the circumstances. In fine, the Sandiganbayan committed a grave abuse of its discretion amounting to excess of

jurisdiction in ordering the arraignment of petitioner before proceeding with the hearing of his petition for bail.

With respect to the second issue of whether petitioner may file a motion to quash during the pendency of his petition for bail, petitioner maintains that a motion to quash and a petition for bail are not inconsistent, and may proceed independently of each other. While he agrees with the prosecution that a motion to quash may in some instances result in the termination of the criminal proceedings and in the release of the accused therein, thus rendering the petition for bail moot and academic, he opines that such is not always the case; hence, an accused in detention cannot be forced to speculate on the outcome of a motion to quash and decide whether or not to file a petition for bail or to withdraw one that has been filed.[69] He also insists that the grant of a motion to quash does not automatically result in the discharge of an accused from detention nor render moot an application for bail under Rule 117, Section 5 of the Revised Rules of Court.[70]

The Court finds that no such inconsistency exists between an application of an accused for bail and his filing of a motion to quash. Bail is the security given for the release of a person in the custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court as required under the conditions set forth under the Rules of Court.[71] Its purpose is to obtain the provisional liberty of a person charged with an offense until his conviction while at the same time securing his appearance at the trial.[72] As stated earlier, a person may apply for bail from the moment that he is deprived of his liberty by virtue of his arrest or voluntary surrender.[73]

On the other hand, a motion to quash an Information is the mode by which an accused assails the validity of a criminal complaint or Information filed against him for insufficiency on its face in point of law, or for defects which are apparent in the face of the Information.[74] An accused may file a motion to quash the Information, as a general rule, before arraignment.[75]

These two reliefs have objectives which are not necessarily antithetical to each other. Certainly, the right of an accused right to seek provisional liberty when charged with an offense not punishable by death, reclusion perpetua or life imprisonment, or when charged with an offense punishable by such penalties but after due hearing, evidence of his guilt is found not to be strong, does not preclude his right to assail the validity of the Information charging him with such offense. It must be conceded, however, that if a motion to quash a criminal complaint or Information on the ground that the same does not charge any offense is granted and the case is dismissed and the accused is ordered released, the petition for bail of an accused may become moot and academic.

We now resolve the issue of whether or not it is mandatory that the hearings on the petitions for bail of petitioner and accused Jose “Jinggoy” Estrada in Criminal Case No. 26558 and the trial of the said case as against former President Joseph E. Estrada be heard jointly.

Petitioner argues that the conduct of joint bail hearings would negate his right to have his petition for bail resolved in a summary proceeding since said hearings might be converted into a full blown trial on the merits by the prosecution.[76]

For their part, the People claim that joint bail hearings will save the court from having to hear the same witnesses and the parties from presenting the same evidence where it would allow separate bail hearings for the accused who are charged as co-conspirators in the crime of plunder.[77]

In issuing its June 1, 2001 Order directing all accused in Criminal Case No. 26558 to participate in the bail hearings, the Sandiganbayan explained that the directive was made was in the interest of the speedy disposition of the case. It stated:

“x x x The obvious fact is, if the rest of the accused other than the accused Serapio were to be excused from participating in the hearing on the motion for bail of accused Serapio, under the pretext that the same does not

concern them and that they will participate in any hearing where evidence is presented by the prosecution only if and when they will already have filed their petitions for bail, or should they decide not to file any, that they will participate only during the trial proper itself, then everybody will be faced with the daunting prospects of having to go through the process of introducing the same witness and pieces of evidence two times, three times or four times, as many times as there are petitions for bail filed. Obviously, such procedure is not conducive to the speedy termination of a case. Neither can such procedure be characterized as an orderly proceeding.”[78]

There is no provision in the Revised Rules of Criminal Procedure or the Rules of Procedure of the Sandiganbayan governing the hearings of two or more petitions for bail filed by different accused or that a petition for bail of an accused be heard simultaneously with the trial of the case against the other accused. The matter of whether or not to conduct a joint hearing of two or more petitions for bail filed by two different accused or to conduct a hearing of said petition jointly with the trial against another accused is addressed to the sound discretion of the trial court. Unless grave abuse of discretion amounting to excess or lack of jurisdiction is shown, the Court will not interfere with the exercise by the Sandiganbayan of its discretion.

It may be underscored that in the exercise of its discretion, the Sandiganbayan must take into account not only the convenience of the State, including the prosecution, but also that of the accused and the witnesses of both the prosecution and the accused and the right of accused to a speedy trial. The Sandiganbayan must also consider the complexities of the cases and of the factual and legal issues involving petitioner and the other accused. After all, if this Court may echo the observation of the United States Supreme Court, the State has a stake, with every citizen, in his being afforded our historic individual protections, including those surrounding criminal prosecutions. About them, this Court dares not become careless or complacent when that fashion has become rampant over the earth.[79]

It must be borne in mind that in *Ocampo vs. Bernabe*,[80] this Court held that in a petition for bail hearing, the court is to conduct only a summary hearing, meaning such brief and speedy method of receiving and considering the evidence of guilt as is practicable and consistent with the purpose of the hearing which is merely to determine the weight of evidence for purposes of bail. The court does not try the merits or enter into any inquiry as to the weight that ought to be given to the evidence against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be offered therein. It may confine itself to receiving such evidence as has reference to substantial matters, avoiding unnecessary thoroughness in the examination and cross-examination of witnesses, and reducing to a reasonable minimum the amount of corroboration particularly on details that are not essential to the purpose of the hearing.

A joint hearing of two separate petitions for bail by two accused will of course avoid duplication of time and effort of both the prosecution and the courts and minimizes the prejudice to the accused, especially so if both movants for bail are charged of having conspired in the commission of the same crime and the prosecution adduces essentially the same evident against them. However, in the cases at bar, the joinder of the hearings of the petition for bail of petitioner with the trial of the case against former President Joseph E. Estrada is an entirely different matter. For, with the participation of the former president in the hearing of petitioner’s petition for bail, the proceeding assumes a completely different dimension. The proceedings will no longer be summary. As against former President Joseph E. Estrada, the proceedings will be a full-blown trial which is antithetical to the nature of a bail hearing. Moreover, following our ruling in *Jose Estrada vs. Sandiganbayan*, *supra* where we stated that Jose “Jinggoy” Estrada can only be charged with conspiracy to commit the acts alleged in sub-paragraph (a) of the amended Information since it is not clear from the latter if the accused in sub-paragraphs (a) to (d) thereof conspired with each other to assist Joseph Estrada to amass ill-gotten wealth, we hold that petitioner can only be charged with having conspired with the other co-accused named in sub-paragraph (a) by “receiving or collecting, directly or indirectly, on several instances, money x x x from illegal gambling, x x x in consideration of toleration

or protection of illegal gambling.”[81] Thus, with respect to petitioner, all that the prosecution needs to adduce to prove that the evidence against him for the charge of plunder is strong are those related to the alleged receipt or collection of money from illegal gambling as described in sub-paragraph (a) of the amended Information. With the joinder of the hearing of petitioner’s petition for bail and the trial of the former President, the latter will have the right to cross-examine intensively and extensively the witnesses for the prosecution in opposition to the petition for bail of petitioner. If petitioner will adduce evidence in support of his petition after the prosecution shall have concluded its evidence, the former President may insist on cross-examining petitioner and his witnesses. The joinder of the hearing of petitioner’s bail petition with the trial of former President Joseph E. Estrada will be prejudicial to petitioner as it will unduly delay the determination of the issue of the right of petitioner to obtain provisional liberty and seek relief from this Court if his petition is denied by the respondent court. The indispensability of the speedy resolution of an application for bail was succinctly explained by Cooley in his treatise *Constitutional Limitations*, thus:

“For, if there were any mode short of confinement which would with reasonable certainty insure the attendance of the accused to answer the accusation, it would not be justifiable to inflict upon him that indignity, when the effect is to subject him in a greater or lesser degree, to the punishment of a guilty person, while as yet it is not determined that he has not committed any crime.”[82]

While the Sandiganbayan, as the court trying Criminal Case No. 26558, is empowered “to proceed with the trial of the case in the manner it determines best conducive to orderly proceedings and speedy termination of the case,”[83] the Court finds that it gravely abused its discretion in ordering that the petition for bail of petitioner and the trial of former President Joseph E. Estrada be held jointly. It bears stressing that the Sandiganbayan itself acknowledged in its May 4, 2001 Order the “pre-eminent position and superiority of the rights of [petitioner] to have the matter of his provisional liberty resolved ... without unnecessary delay,”[84] only to make a volte face and declare that after all the hearing of petition for bail of petitioner and Jose “Jinggoy” Estrada and the trial as against former President Joseph E. Estrada should be held simultaneously. In ordering that petitioner’s petition for bail to be heard jointly with the trial of the case against his co-accused former President Joseph E. Estrada, the Sandiganbayan in effect allowed further and unnecessary delay in the resolution thereof to the prejudice of petitioner. In fine then, the Sandiganbayan committed a grave abuse of its discretion in ordering a simultaneous hearing of petitioner’s petition for bail with the trial of the case against former President Joseph E. Estrada on its merits.

With respect to petitioner’s allegations that the prosecution tried to delay the bail hearings by filing dilatory motions, the People aver that it is petitioner and his co-accused who caused the delay in the trial of Criminal Case No. 26558 by their filing of numerous manifestations and pleadings with the Sandiganbayan.[85] They assert that they filed the motion for joint bail hearing and motion for earlier arraignment around the original schedule for the bail hearings which was on May 21-25, 2001.[86]

They argue further that bail is not a matter of right in capital offenses.[87] In support thereof, they cite Article III, Sec 13 of the Constitution, which states that—

“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. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.”[88]

The People also cited Rule 114, Secs. 7 and 4 of the Revised Rules of Court which provide:

“Sec. 7. Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable.—No person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment,

shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.

Sec. 4. Bail, a matter of right, exception.—All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule x x x (b) and before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua or life imprisonment.”[89]

Irrefragably, a person charged with a capital offense is not absolutely denied the opportunity to obtain provisional liberty on bail pending the judgment of his case. However, as to such person, bail is not a matter of right but is discretionary upon the court.[90] Had the rule been otherwise, the Rules would not have provided for an application for bail by a person charged with a capital offense under Rule 114, Section 8 which states:

“Sec. 8. Burden of proof in bail application. — At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, reclusion perpetua, or life imprisonment, the prosecution has the burden of showing that the evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial but, upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify.”[91]

Under the foregoing provision, there must be a showing that the evidence of guilt against a person charged with a capital offense is not strong for the court to grant him bail. Thus, upon an application for bail by the person charged with a capital offense, a hearing thereon must be conducted, where the prosecution must be accorded an opportunity to discharge its burden of proving that the evidence of guilt against an accused is strong.[92] The prosecution shall be accorded the opportunity to present all the evidence it may deems necessary for this purpose.[93] When it is satisfactorily demonstrated that the evidence of guilt is strong, it is the court’s duty to deny the application for bail. However, when the evidence of guilt is not strong, bail becomes a matter of right.[94]

In this case, petitioner is not entitled to bail as a matter of right at this stage of the proceedings. Petitioner’s claim that the prosecution had refused to present evidence to prove his guilt for purposes of his bail application and that the Sandiganbayan has refused to grant a hearing thereon is not borne by the records. The prosecution did not waive, expressly or even impliedly, its right to adduce evidence in opposition to the petition for bail of petitioner. It must be noted that the Sandiganbayan had already scheduled the hearing dates for petitioner’s application for bail but the same were reset due to pending incidents raised in several motions filed by the parties, which incidents had to be resolved by the court prior to the bail hearings. The bail hearing was eventually scheduled by the Sandiganbayan on July 10, 2001 but the hearing did not push through due to the filing of this petition on June 29, 2001.

The delay in the conduct of hearings on petitioner’s application for bail is therefore not imputable solely to the Sandiganbayan or to the prosecution. Petitioner is also partly to blame therefor, as is evident from the following list of motions filed by him and by the prosecution:

Motions filed by petitioner:

- Urgent Omnibus Motion, dated April 6, 2001, for (1) leave to file motion for reconsideration/reinvestigation and to direct ombudsman to conduct reinvestigation; (2) conduct a determination of probable cause as would suggest the issuance of house arrest; (3) hold in abeyance the issuance of warrant of arrest and other proceedings pending determination of probable cause;
- Motion for Early Resolution, dated May 24, 2001;

- Urgent Motion to Hold in Abeyance Implementation or Service of Warrant of Arrest for Immediate Grant of bail or For Release on Recognizance, dated April 25, 2001;
- Urgent Motion to allow Accused Serapio to Vote at Obando, Bulacan, dated May 11, 2001;
- Urgent Motion for Reconsideration, dated May 22, 2001, praying for Resolution of May 18, 2001 be set aside and bail hearings be set at the earliest possible time;
- Urgent Motion for Immediate Release on Bail or Recognizance, dated May 27, 2001;
- Motion for Reconsideration of denial of Urgent Omnibus Motion, dated June 13, 2001, praying that he be allowed to file a Motion for Reinvestigation; and
- Motion to Quash, dated June 26, 2001.[95]

Motions filed by the prosecution:

- Motion for Earlier Arraignment, dated May 8, 2001;[96]
- Motion for Joint Bail Hearings of Accused Joseph Estrada, Jose “Jinggoy” Estrada and Edward Serapio, dated May 8, 2001;[97]
- Opposition to the Urgent Motion for Reconsideration and Omnibus Motion to Adjust Earlier Arraignment, dated May 25, 2001;[98] and
- Omnibus Motion for Examination, Testimony and Transcription in Filipino, dated June 19, 2001.[99]

The other accused in Criminal Case No. 26558 also contributed to the aforesaid delay by their filing of the following motions:

- Motion to Quash or Suspend, dated April 24, 2001, filed by Jinggoy Estrada, assailing the constitutionality of R.A. No. 7080 and praying that the Amended Information be quashed;
- Very Urgent Omnibus Motion, dated April 30, 2001, filed by Jinggoy Estrada, praying that he be (1) excluded from the Amended Information for lack of probable cause; (2) released from custody; or in the alternative, (3) be allowed to post bail;
- Urgent Ex-Parte Motion to Place on House Arrest, dated April 25, 2001, filed by Joseph and Jinggoy Estrada, praying that they be placed on house arrest during the pendency of the case;
- Position Paper [re: House Arrest], dated May 2, 2001, filed by Joseph and Jinggoy Estrada;
- Supplemental Position Paper [re: House Arrest], dated May 2, 2001, filed by Joseph and Jinggoy Estrada;
- Omnibus Motion, dated May 7, 2001, filed by Joseph Estrada, praying by reinvestigation of the case by the Ombudsman or the outright dismissal of the case;
- Urgent Ex-Parte Motion for Extension, dated May 2, 2001, filed by Jinggoy Estrada, requesting for five (5) within which to respond to the Opposition to Motion to Quash in view of the holidays and election-related distractions;
- Opposition to Urgent Motion for Earlier Arraignment, dated May 10, 2001, filed by Joseph Estrada;
- Omnibus Manifestation on voting and custodial arrangement, dated May 11, 2001, filed by Joseph and Jinggoy Estrada, praying that they be placed on house arrest;

- Manifestation regarding house arrest, dated May 6, 2001, filed by Joseph and Jinggoy Estrada;
- Summation regarding house arrest, dated May 23, 2001, filed by Joseph and Jinggoy Estrada;
- Urgent Manifestation & Motion, dated May 6, 2001 filed by Jinggoy Estrada;
- Manifestation, dated May 28, 2001, filed by Joseph and Jinggoy Estrada, praying that they be allowed to be confined in Tanay;
- Motion to charge as Accused Luis “Chavit” Singson, filed by Joseph Estrada;
- Omnibus Motion, dated June 11, 2001, filed by Joseph and Jinggoy Estrada, seeking reconsideration of denial of requests for house arrest, for detention in Tanay or Camp Crame; motion for inhibition of Justice Badoy;
- Urgent Motion to Allow Accused to Clear His Desk as Mayor of San Juan, Metro Manila, dated June 28, 2001, filed by Jinggoy Estrada;
- Motion for Reconsideration, dated June 9, 2001, filed by Joseph and Jinggoy Estrada, praying that the resolution compelling them to be present at petitioner Serapio’s hearing for bail be reconsidered;
- Motion to Quash, dated June 7, 2001, filed by Joseph Estrada;
- Still Another Manifestation, dated June 14, 2001, filed by Joseph and Jinggoy Estrada stating that Bishop Teodoro Bacani favors their house arrest;
- Manifestation, dated June 15, 2001, filed by Joseph and Jinggoy Estrada, waiving their right to be present at the June 18 and 21, 2001 bail hearings and reserving their right to trial with assessors;
- Omnibus Motion for Instructions: 30-Day House Arrest; Production, Inspection and Copying of Documents; and Possible Trial with Assessors, dated June 19, 2001, filed by Joseph and Jinggoy Estrada;
- Urgent Motion for Additional Time to Wind Up Affairs, dated June 20, 2001, filed by Jinggoy Estrada;
- Manifestation, dated June 22, 2001, filed by Jinggoy Estrada, asking for free dates for parties, claiming that denial of bail is cruel and inhuman, reiterating request for gag order of prosecution witnesses, availing of production, inspection and copying of documents, requesting for status of alias case; and
- Compliance, dated June 25, 2001, filed by Jinggoy Estrada, requesting for permission to attend some municipal affairs in San Juan, Metro Manila.[100]

Furthermore, the Court has previously ruled that even in cases where the prosecution refuses to adduce evidence in opposition to an application for bail by an accused charged with a capital offense, the trial court is still under duty to conduct a hearing on said application.[101] The rationale for such requirement was explained in *Narciso vs. Sta. Romana-Cruz* (supra), citing *Basco vs. Rapatalo*:[102]

“When the grant of bail is discretionary, the prosecution has the burden of showing that the evidence of guilt against the accused is strong. However, the determination of whether or not the evidence of guilt is strong, being a matter of judicial discretion, remains with the judge. This discretion by the very nature of things, may rightly be exercised only after the evidence is submitted to the court at the hearing. Since the discretion is directed to the weight of the evidence and since evidence cannot properly be weighed if not duly exhibited or produced before the court, it is obvious that a proper exercise of judicial discretion requires that the evidence of guilt be submitted to the court, the petitioner having the right of cross-examination and to introduce his own evidence in rebuttal.”[103]

Accordingly, petitioner cannot be released from detention until the Sandiganbayan conducts a hearing of his

application for bail and resolve the same in his favor. Even then, there must first be a finding that the evidence against petitioner is not strong before he may be granted bail.

Anent the issue of the propriety of the issuance of a writ of habeas corpus for petitioner, he contends that he is entitled to the issuance of said writ because the State, through the prosecution's refusal to present evidence and by the Sandiganbayan's refusal to grant a bail hearing, has failed to discharge its burden of proving that as against him, evidence of guilt for the capital offense of plunder is strong. Petitioner contends that the prosecution launched "a seemingly endless barrage of obstructive and dilatory moves" to prevent the conduct of bail hearings. Specifically, the prosecution moved for petitioner's arraignment before the commencement of bail hearings and insisted on joint bail hearings for petitioner, Joseph Estrada and Jinggoy Estrada despite the fact that it was only petitioner who asked for a bail hearing; manifested that it would present its evidence as if it is the presentation of the evidence in chief, meaning that the bail hearings would be concluded only after the prosecution presented its entire case upon the accused; and argued that petitioner's motion to quash and his petition for bail are inconsistent, and therefore, petitioner should choose to pursue only one of these two remedies.[104] He further claims that the Sandiganbayan, through its questioned orders and resolutions postponing the bail hearings effectively denied him of his right to bail and to due process of law.[105]

Petitioner also maintains that the issuance by the Sandiganbayan of new orders canceling the bail hearings which it had earlier set did not render moot and academic the petition for issuance of a writ of habeas corpus, since said orders have resulted in a continuing deprivation of petitioner's right to bail.[106] He argues further that the fact that he was arrested and is detained pursuant to valid process does not by itself negate the efficacy of the remedy of habeas corpus. In support of his contention, petitioner cites *Moncupa vs. Enrile*,[107] where the Court held that habeas corpus extends to instances where the detention, while valid from its inception, has later become arbitrary.[108]

However, the People insist that habeas corpus is not proper because petitioner was arrested pursuant to the amended information which was earlier filed in court,[109] the warrant of arrest issuant pursuant thereto was valid, and petitioner voluntarily surrendered to the authorities.[110]

As a general rule, the writ of habeas corpus will not issue where the person alleged to be restrained of his liberty in custody of an officer under a process issued by the court which jurisdiction to do so.[111] In exceptional circumstances, habeas corpus may be granted by the courts even when the person concerned is detained pursuant to a valid arrest or his voluntary surrender, for this writ of liberty is recognized as "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action" due to "its ability to cut through barriers of form and procedural mazes." [112] Thus, in previous cases, we issued the writ where the deprivation of liberty, while initially valid under the law, had later become invalid,[113] and even though the persons praying for its issuance were not completely deprived of their liberty.[114]

The Court finds no basis for the issuance of a writ of habeas corpus in favor of petitioner. The general rule that habeas corpus does not lie where the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court which had jurisdiction to issue the same[115] applies, because petitioner is under detention pursuant to the order of arrest issued by the Sandiganbayan on April 25, 2001 after the filing by the Ombudsman of the amended information for plunder against petitioner and his co-accused. Petitioner had in fact voluntarily surrendered himself to the authorities on April 25, 2001 upon learning that a warrant for his arrest had been issued.

The ruling in *Moncupa vs. Enrile*[116] that habeas corpus will lie where the deprivation of liberty which was initially valid has become arbitrary in view of subsequent developments finds no application in the present case

because the hearing on petitioner's application for bail has yet to commence. As stated earlier, the delay in the hearing of petitioner's petition for bail cannot be pinned solely on the Sandiganbayan or on the prosecution for that matter. Petitioner himself is partly to be blamed. Moreover, a petition for habeas corpus is not the appropriate remedy for asserting one's right to bail.[117] It cannot be availed of where accused is entitled to bail not as a matter of right but on the discretion of the court and the latter has not abused such discretion in refusing to grant bail,[118] or has not even exercised said discretion. The proper recourse is to file an application for bail with the court where the criminal case is pending and to allow hearings thereon to proceed.

The issuance of a writ of habeas corpus would not only be unjustified but would also preempt the Sandiganbayan's resolution of the pending application for bail of petitioner. The recourse of petitioner is to forthwith proceed with the hearing on his application for bail.

IN THE LIGHT OF ALL THE FOREGOING, judgment is hereby rendered as follows:

- In G.R. No. 148769 and G.R. No. 149116, the petitions are DISMISSED. The resolutions of respondent Sandiganbayan subject of said petitions are AFFIRMED; and

- In G.R. No. 148468, the petition is PARTIALLY GRANTED. The resolution of respondent Sandiganbayan, Annex "L" of the petition, ordering a joint hearing of petitioner's petition for bail and the trial of Criminal Case No. 26558 as against former President Joseph E. Estrada is SET ASIDE; the arraignment of petitioner on July 10, 2001 is also SET ASIDE.

No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Mendoza, Panganiban, Quisumbing, Austria-Martinez, Corona, Carpio-Morales, and Azcuna, JJ., concur.

Vitug, J., see separate opinion.

Sandoval-Gutierrez, J., see dissenting opinion.

Ynares-Santiago, J., joins the dissenting opinion of J. Sandoval-Gutierrez.

Carpio, J., no part, prior inhibition in plunder cases.

[1] Rollo, G.R. No. 148468, pp. 49-51.

[2] Rollo, G.R. No. 149116, p.16.

[3] Ibid., pp. 18, 249-281.

[4] Ibid., pp. 16-17.

[5] Rollo, G.R. No. 146468, p. 54.

[6] Ibid., pp. 61-66.

[7] Rollo, G.R. No. 149116, p. 412.

[8] Rollo, G.R. No. 148468, p. 112.

[9] Ibid., p. 114.

[10] Ibid., pp. 147-164.

- [11] Ibid., pp. 43-44.
- [12] Rollo, G.R. No. 148769, pp. 165-197.
- [13] Rollo, pp. 17-18.
- [14] Rollo, p. 46.
- [15] Supra.
- [16] Jose “Jinggoy” Estrada vs. Sandiganbayan (Third Division), et al., G.R. No. 148965, February 26, 2002.
- [17] Luz Balitaan vs. Court of First Instance, et al., 115 SCRA 729 (1982).
- [18] People vs. Ronnie Quitlong, et al., 292 SCRA 360 (1998).
- [19] G.R. No. 148965, February 26, 2002.
- [20] Supra, p. 14.
- [21] Luz Balitaan vs. Court of First Instance of Batangas, supra.
- [22] See note 19.
- [23] People vs. Rodolfo Hilario, et al., 354 SCRA 534 (2001).
- [24] Territory vs. Goto, 27 Hawaii 65 (1923).
- [25] Rollo, pp. 194-195.
- [26] Rollo, p. 21.
- [27] Rollo, G.R. No. 149116, p. 21.
- [28] Ibid., p. 25.
- [29] Ibid., pp. 26-27.
- [30] Ibid., p. 30.
- [31] Ibid., pp. 30-33.
- [32] Ibid., pp. 33-36.
- [33] Ibid., p. 36.
- [34] Ibid., p. 39.
- [35] Ibid., pp. 43-44.
- [36] Ibid., pp. 295-298.
- [37] Ibid., p. 298.
- [38] Ibid., p. 301.
- [39] Ibid., p. 472.
- [40] Ibid., pp. 473-480.
- [41] Ibid., pp. 480-492.

[42] 335 SCRA 581 (2000).

[43] 233 SCRA 439 (1994).

[44] Rollo, G.R. No. 148468, p. 59.

[45] Ibid., pp. 408-409.

[46] Rollo, G.R. No. 149116, pp. 412-413.

[47] Rolito Go vs. Court of Appeals, 206 SCRA 138 (1992).

[48] People vs. Madraga, 344 SCRA 628 (2000); Sanchez vs. Demetriou, 227 SCRA 627 (1993).

[49] Rule 112, Sec. 1, Revised Rules of Criminal Procedure; Webb vs. De Leon, 247 SCRA 652 (1995).

[50] Supra, pp. 675-676.

[51] Metropolitan Bank & Trust Co. vs. Tonda, 338 SCRA 254 (2000); Raro vs. Sandiganbayan, 335 SCRA 581 (2000).

[52] Crespo vs. Mogul, 151 SCRA 462 (1987).

[53] 206 SCRA 138 (1992).

[54] Vide Note 4.

[55] Rollo, G.R. No. 148468, p. 366.

[56] Ibid., pp. 366-367.

[57] Ibid., p. 367.

[58] Ibid., p. 368.

[59] Ibid., p. 369.

[60] Ibid., pp. 212-215.

[61] Ibid., p. 215.

[62] Ibid., p. 216.

[63] Salonga vs. Cruz Paño, 134 SCRA 438, 463 (1985).

[64] Mendoza vs. CFI of Quezon, 51 SCRA 369 (1973).

[65] 324 SCRA 321 (2000).

[66] Id., p. 330.

[67] Herras Teehankee vs. Rovira, 75 Phil. 364 (1945).

[68] Lavides vs. Court of Appeals, supra.

[69] Rollo, G.R. No. 148468, pp. 37-38.

[70] Ibid., p. 374.

- [71] Rule 114, Sec. 1, Revised Rules of Criminal Procedure.
- [72] *Almeda vs. Villaluz*, 66 SCRA 38 (1975).
- [73] *Mendoza vs. CFI of Quezon*, 51 SCRA 369 (1973).
- [74] *Smith v. State*, 78 S 530.
- [75] Rule 117, Section 1, Revised Rules of Criminal Procedure.
- [76] *Rollo*, G.R. No. 148468, p. 373.
- [77] *Ibid.*, pp. 220-225.
- [78] *Ibid.*, pp. 112-113.
- [79] *Kotteakos vs. United States*, 90 L.Ed. 1564 (1945).
- [80] 77 Phil. 55 (1946).
- [81] *Vide* Note 16.
- [82] *Ibid.*, pp. 643-644.
- [83] *Rollo*, G.R. No. 148468, p. 112.
- [84] *Ibid.*, p. 68.
- [85] *Ibid.*, pp. 233-242.
- [86] *Ibid.*, p.188.
- [87] *Ibid.*, p. 210.
- [88] *Ibid.*, p. 211, [emphasis by respondents].
- [89] *Ibid.*, p. 211, [emphasis by respondents].
- [90] *People vs. Gako, Jr.*, 348 SCRA 334 (2000); *Goodman vs. De La Victoria*, 325 SCRA 658 (2000).
- [91] *Supra*.
- [92] *Narciso vs. Sta. Romana-Cruz*, 328 SCRA 505 (2000); *Tolentino vs. Camano*, 322 SCRA 559 (2000).
- [93] *People vs. Nano*, 205 SCRA 155 (1992); *Herras Teehankee v. Director of Prisons*, 76 Phil. 756 (1946).
- [94] *Padilla vs. Court of Appeals*, 260 SCRA 155 (1996).
- [95] *Rollo*, G.R. No. 148468, pp. 240-241.
- [96] *Ibid.*, pp. 70-74.
- [97] *Ibid.*, pp. 75-82.
- [98] *Ibid.*, pp. 97-100.
- [99] *Ibid.*, pp. 115-116.
- [100] *Ibid.*, pp. 233-239.
- [101] *Narciso vs. Sta. Romana-Cruz*, *supra*; *Tolentino vs. Camano*, *supra*; *Baylon vs. Sison*, 243 SCRA 284

(1995).

[102] 269 SCRA 220 (1997).

[103] Id., p. 513, (emphasis supplied).

[104] Rollo, G.R. No. 148468, pp. 31-36.

[105] Ibid., pp. 38-39.

[106] Ibid., pp. 392-393.

[107] 141 SCRA 233 (1986).

[108] Rollo, G.R. No. 148468, p. 396.

[109] Ibid., pp. 246-247.

[110] Ibid., pp. 245-251.

[111]] Paredes vs. Sandiganbayan, 193 SCRA 464 (1991); Luna vs. Plaza, 26 SCRA 310 (1969).

[112] Gumabon vs. Director of Prisons, 37 SCRA 420 (1971); citing Harris v. Nelson, 22 L Ed 2d 281.

[113] Gumabon vs. Director of Prisons, supra.

[114] Moncupa vs. Enrile, 141 SCRA 233 (1986); Caunca vs. Salazar, 85 Phil. 81 (1949); Villavicencio vs. Lukban, 39 Phil. 778.

[115] Paredes vs. Sandiganbayan, supra; Luna vs. Plaza, supra.

[116] Supra.

[117] Galvez vs. Court of Appeals, 237 SCRA 685 (1994); Enrile vs. Salazar, 186 SCRA 217 (1990).

[118] Herras Teehankee vs. Director of Prisons, 76 Phil. 756 (1946).

SEPARATE OPINION

VITUG, J.:

I fully subscribe to the ponencia in G.R. No. 148468 that -

a)

The arraignment of an accused is not a prerequisite to the conduct of hearings on a petition for bail. A person is allowed to petition for bail as soon as he is deprived of his liberty by virtue of his arrest or voluntary surrender.

b)

There is no inconsistency between an application of an accused for bail and his filing of a motion to quash, these two reliefs not being necessarily antithetical to each other.

c)

The joinder of hearing of herein petitioner's bail petition with the trial of former President Joseph Estrada indeed could unduly delay the determination of the issue of the right of petitioner to obtain provisional liberty.

d)

The claim of petitioner that the prosecution has refused to present evidence to prove his guilt for purposes of his bail application and that the Sandiganbayan has refused to grant a hearing thereon hardly finds substantiation. Neither has the prosecution waived, expressly or even impliedly, its right to adduce evidence in opposition to the petition for bail of petitioner.

e)

There is no basis for the issuance of a writ of habeas corpus in favor of petitioner. Habeas corpus does not lie where the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court having jurisdiction thereover.

In G.R. No. 148769 and G.R. No. 149116, the issues for resolution are analogous to those posed in G.R. No. 148965, entitled “Jose ‘Jinggoy’ Estrada vs. Sandiganbayan [Third Division], People of the Philippines and Office of the Ombudsman,” decided by the Court on 26 February 2002. Petitioner Atty. Edward Serapio stands indicted with the former President, Mr. Joseph E. Estrada, for plunder. Petitioner is charged with exactly the same degree of culpability as that of Mr. Jose “Jinggoy” Estrada, thusly:

“AMENDED INFORMATION

“The undersigned Ombudsman Prosecutor and OIC-Director, EPIB, Office of the Ombudsman, hereby accuses former PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, Joseph Ejercito Estrada a.k.a. ‘ASIONG SALONGA’ and a.k.a. ‘JOSE VELARDE’, TOGETHER WITH Jose ‘Jinggoy’ Estrada, Charlie ‘Atong’ Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, and John DOES & Jane Does, of the crime of Plunder, defined and penalized under R.A. 7080, as amended by Sec. 12 of R.A. 7659, committed as follows:

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

“(a) by receiving OR collecting, directly or indirectly, on SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (P545,000,000.00) MORE OR LESS, FROM ILLEGAL GAMBLING, IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connivance with co-accused CHARLIE ‘ATONG’ ANG, Jose ‘Jinggoy’ Estrada, Yolanda T. Rica forte, Edward Serapio, AND JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;”

Atty. Serapio, in G.R. No. 148769, questions the denial by the Sandiganbayan of his motion to quash the Amended Information on the ground that, among other things, it alleges, at least as to him, neither a combination

or series of overt acts constitutive of plunder nor a pattern of criminal acts indicative of an overall unlawful scheme in conspiracy with others. In G.R. No. 149116, petitioner claims that the Sandiganbayan has committed grave abuse of discretion in denying his omnibus motion to hold in abeyance the issuance of a warrant for his arrest, as well as the proceedings in Criminal Case No. 26558), to conduct a determination of probable cause, and to direct the Ombudsman to conduct a reinvestigation of the charges against him.

In my separate opinion in G.R. No. 148965, which I now reiterate, I have said:

“Plunder may be committed by any public officer either by himself or “in connivance” with other persons; it may also be committed by a person who participates with a public officer in the commission of an offense contributing to the crime of plunder. A person may thus be held accountable under the law by conniving with the principal co-accused or by participating in the commission of “an offense” contributing to the crime of plunder. The term “in connivance” would suggest an agreement or consent to commit an unlawful act or deed with or by another, to connive being to cooperate secretly or privily with another.[1] Upon the other hand, to participate is to have a part or a share in conjunction with another of the proceeds of the unlawful act or deed.

“The amended Information alleged “connivance” and would assume that petitioner and his co-accused had a common design in perpetrating the violations complained of constitutive of “plunder.”

“The Supreme Court in *Estrada vs. Sandiganbayan*[2] has declared the anti-plunder law constitutional for being neither vague nor ambiguous on the thesis that the terms “series” and “combination” are not unsusceptible to firm understanding. “Series” refers to two or more acts falling under the same category of the enumerated acts provided in Section 1(d)[3] of the statute; “combination” pertains to two or more acts falling under at least two separate categories mentioned in the same law.[4]

“xxx xxx xxx

“The government argues that the illegal act ascribed to petitioner is a part of the chain that links the various acts of plunder by the principal accused. It seems to suggest that a mere allegation of conspiracy is quite enough to hold petitioner equally liable with the principal accused for the latter’s other acts, even if unknown to him, in paragraph (a) of the indictment. This contention is a glaring bent. It is, to my mind, utterly unacceptable, neither right nor just, to cast criminal liability on one for the acts or deeds of plunder that may have been committed by another or others over which he has not consented or acceded to, participated in, or even in fact been aware of. Such vicarious criminal liability is never to be taken lightly but must always be made explicit not merely at the trial but likewise, and no less important, in the complaint or information itself in order to meet the fundamental right of an accused to be fully informed of the charge against him. It is a requirement that cannot be dispensed with if he were to be meaningfully assured that he truly has a right to defend himself. Indeed, an unwarranted generalization on the scope of the anti-plunder law would be a fatal blow to maintaining its constitutionality given the ratio decidendi in the pronouncement heretofore made by the Court upholding the validity of the statute.

“Given the foregoing exegesis, the petitioner, although ineffectively charged in the Amended Information for plunder, could still be prosecuted and tried for a lesser offense, for it is a recognized rule that an accused shall not be discharged even when a mistake has been made in charging the proper offense if he may still be held accountable for any other offense necessarily included in the crime being charged. It is, however, the Sandiganbayan, not this Court, which must make this determination on the basis of its own findings.”

WHEREFORE, I accept the ponencia in G.R. No. 148468 but, as regards G.R. No. 148769 and G.R. No. 149116, I vote for the remand of the case to the Sandiganbayan for further proceedings on the bail application of petitioner and urge that the incident be resolved with dispatch.

[1] Black's Law Dictionary.

[2] G.R. No. 148560.

[3] Section 1(d)

"1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

"2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

"3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;

"4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

"5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

"6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines."

[4] *Supra.*, p. 15.

DISSENTING OPINION

SANDOVAL-GUTIERREZ, J.:

Once again, the Amended Information dated April 18, 2001 in Criminal Case No. 26558[1] is subjected to judicial scrutiny, this time, via a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure (G.R. No. 148769) filed by petitioner Edward S. Serapio. For easy reference, let me quote the Amended Information, thus:

"The undersigned Ombudsman Prosecutor and OIC-Director, EPIB, Office of the Ombudsman, hereby accuses former President of the Republic of the Philippines, Joseph Ejercito Estrada a.k.a. 'Asiong Salonga' and a.k.a. 'Jose Velarde,' together with Jose 'Jinggoy' Estrada, Charlie 'Atong' Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, John Doe a.k.a Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, and John Does & Jane Does, of the crime of Plunder, defined and penalized under R.A. No. 7080, as amended by Sec. 12 of R.A. No. 7659, committed as follows:

"That during the period from June 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, then a public officer, being then the President of the Republic of the Philippines, by himself and/or in connivance/conspiracy with his co-accused, who are members of his family, relatives by affinity or consanguinity, business associates, subordinates and/or other persons, by taking undue advantage of his official position, authority, relationship, connection, or influence, did then and there willfully, unlawfully and criminally amass, accumulate and acquire by himself, directly or indirectly, ill-gotten wealth in the aggregate amount or total value of four billion ninety seven million eight hundred four thousand one hundred seventy three pesos and seventeen centavos [P4,097,804,173.17], more or less, thereby unjustly enriching himself or themselves at the expense and to the damage of the Filipino people and the Republic of the Philippines through any or a combination or a series of overt OR criminal acts, or

similar schemes or means, described as follows:

a) by receiving or collecting, directly or indirectly, on aggregate amount of Five Hundred Forty-Five Million Pesos (P545,000,000.00), more or less, from illegal gambling in the form of gift, share, percentage kickback or any form of pecuniary benefit, by himself and/or in connivance with co-accused Charlie “Atong” Ang, Jose ‘Jinggoy’ Estrada, Yolanda T. Ricaforte, Edward Serapio, AND JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;

b) by diverting, receiving, misappropriating, converting or misusing directly or indirectly, for his or their personal gain and benefit, public funds in the amount of one hundred thirty million pesos (P130,000,000.00) more or less, representing a portion of the Two Hundred Million Pesos (P200,000,000.00) tobacco excise tax share allocated for the Province of Ilocos Sur under R.A. No. 7171, by himself and/or in connivance with co-accused Charlie ‘Atong’ Ang, Alma Alfaro, John Doe a.k.a. Eleuterio Tan Or Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a Delia Rajas, and other John Does and Jane Does;

c) by directing, ordering and compelling, for his personal gain and benefit, the Government Service Insurance System (GSIS) to purchase, 351,878,000 shares of stock, more or less and the Social Security System (SSS), 329,855,000 shares of stock, more or less, of the Belle Corporation in the amount of more or less One Billion One Hundred Two Million Nine Hundred Sixty Five Thousand Six Hundred Seven Pesos and Fifty Centavos [P1,102,965,607.50] and more or less Seven Hundred Forty Four Million Six Hundred Twelve Thousand Four Hundred Fifty Pesos (P744,612,450.00), respectively, or a total of a more or less One Billion Eight Hundred Forty Seven Million Five Hundred Seventy Eight Thousand Fifty Seven Pesos and fifty centavos [P1,847,578,057.50]; and by collecting or receiving, directly or indirectly, by himself and/or in connivance with John Does and Jane Does, Commissions or percentages by reason of said purchases of shares of stock in the amount of One Hundred Eighty-Nine Million Seven Hundred Thousand Pesos [P189,700,000], more or less, from the Belle Corporation, which became part of the deposit in the Equitable-PCI Bank under the account of “Jose Velarde”;

d) by unjustly enriching himself FROM COMMISSIONS, gifts, shares, percentages, kickbacks, or any form of pecuniary benefits, in connivance with John Does and Jane Does, in the amount of more or less Three Billion Two Hundred Thirty-Three Million One Hundred Four Thousand One Hundred Seventy Three Pesos and Seventeen Centavos [P3,233,104,173.17] and depositing the same under his account name “Jose Velarde” at the Equitable-PCI Bank.

CONTRARY TO LAW.”[2]

In G.R. No. 148965,[3] I stood apart from the majority of my brethren in denying the Petition for Certiorari and Mandamus filed by Jose “Jinggoy” E. Estrada against the Sandiganbayan, People of the Philippines and Office of the Ombudsman. I articulated in my Dissent the various reasons why I could not join the majority in sustaining the afore-quoted Amended Information. Now, I am taking this second occasion to reiterate them, hoping that the majority will have a change of mind and resolve to re-examine its Decision.

Consistent with my previous Dissent, it is my view that petitioner Edward S. Serapio, like Jose “Jinggoy” Estrada, may not be validly prosecuted for the crime of plunder under the Amended Information.

To be forthright, the obvious error in the foregoing Information lies in the fact that it joined together four distinct conspiracies in a single continuing conspiracy of plunder and indiscriminately accused all the persons who participated therein of the said resulting crime. Simply put, the Amended Information is a mere fusion of separate conspiracies. It is akin to that of “separate spokes meeting at a common center, without the rim of the wheel to enclose the spokes.” This is legally impermissible. Such kind of information places the accused’s primary right to be informed of the nature and cause of the accusation against him in jeopardy.

I must reiterate what I have pointed out in G.R. No. 148965.

There exists a distinction between separate conspiracies, where certain parties are common to all the conspiracies, but with no overall goal or common purpose; and one overall continuing conspiracy with various parties joining and terminating their relationship at different times.[4] Distinct and separate conspiracies do not, in contemplation of law, become a single conspiracy merely because one man is a participant and key figure in all the separate conspiracies.[5] The present case is a perfect example. The fact that former President Estrada is a common key figure in the criminal acts recited under paragraphs (a), (b), (c) and (d) of the Amended Information does not automatically give rise to a single continuing conspiracy of plunder, particularly, with respect to petitioner Serapio whose participation is limited to paragraph (a). To say otherwise is to impute to petitioner or to any of the accused the acts and statements of the others without reference to whether or not their acts are related to one scheme or overall plan. It could not have been the intention of the Legislature, in drafting R.A. No. 7080, to authorize the prosecution to chain together four separate and distinct crimes when the only nexus among them lies in the fact that one man participated in all. There lies a great danger for the transference of guilt from one to another across the line separating conspiracies.

The principle laid down above is no longer novel in other jurisdictions. Various American decisions had expounded on the matter. In *Battle vs. State*,[6] a judgment of conviction was reversed on the ground that the allegation of conspiracy in the indictment was insufficient, thus:

“Among the requirements for the allegations in an indictment to be sufficient are (1) the specificity test, i.e., does the indictment contain all the elements of the offense pleaded in terms sufficient enough to apprise the accused of what he must be prepared to meet, and (2) is the indictment pleaded in such a manner as to enable the defendant to plead prior jeopardy as a defense if additional charges are brought for the same offense. x x x Further, our Supreme Court has recently considered the criteria for sufficiency in conspiracy cases in *Goldberg vs. State*, 351 So. 2d 332 (Fla. 1977),[7] as this court has likewise done in *State vs. Giardino*, 363 So. 2d 201 (Fla. 3d DCA 1978).[8] Applying the principles developed in the above cases to the instant cause, we are of the opinion that Count I of the indictment was insufficient. It is impossible to ascertain whether the indictment charges that appellant conspired with Acuna and Hernandez jointly or severally, or whether appellant conspired entirely with persons unknown. Also, it is impossible to tell whether appellant met with Acuna and Hernandez jointly or severally, or whether appellant conspired entirely with persons unknown. Also, it is impossible to tell whether appellant met with Acuna and Hernandez jointly or severally, or whether appellant met with persons unknown to plan the murder of Torres. Because appellant was left to guess who these other conspirators might be and because the vagueness of the allegations did nothing to protect him from further prosecution, we are of the opinion that they were too vague and indefinite to meet the requirements set forth above. Accordingly, in our opinion the trial court erred in failing to dismiss Count I of the indictment for conspiracy against appellant.” (Footnote supplied)

In *State vs. Harkness*,[9] a demurrer to the information was sustained on the ground that an information charging two separate conspiracies is bad for misjoinder of parties where the only connection between the two conspiracies was the fact that one defendant participated in both. The Supreme Court of Washington ruled:

“[W]e see no ground upon which the counts against both the Harknesses can be included in the same information. While they are charged with crimes of the same class, the crimes are alleged to have been committed independently and at different times. The crimes are related to each other only by the fact that the prescriptions used were issued by the same physician. x x x We find ourselves unable to agree with the appellant that the misjoinder is cured by the conspiracy charge. It is doubtful if the count is sufficient in form to charge a conspiracy. x x x Reference is made in the count, to counts one to six, inclusive, for a specification of the acts constituting the conspiracy. When these counts are examined, it will be seen that they charge separate substantive offenses without alleging any concert of action between the Harknesses.”

Thus, when certain persons unite to perform certain acts, and some of them unite with others who are engaged in totally different acts, it is error to join them in an information.[10] Otherwise stated, defendants charged with two separate conspiracies having one common participant are not, without more, properly joined, and similarity of acts alone is insufficient to indicate that series of acts exist.[11] Joinder may be permitted when the connection between the alleged offenses and the parties is the accused's awareness of the identity and activity of the other alleged participants.[12] There must be a showing of one overall common goal to which the participants bind themselves.

Apparently, the factual recitals of the Amended Information fail to sufficiently allege that petitioner Serapio deliberately agreed or banded with the rest of the accused for the purpose of committing Plunder. There is no averment that he conspired with them in committing the crimes specified in paragraphs (b), (c) and (d) of the Amended Information, such as misappropriation of the tobacco excise tax share of Ilocos Sur; receipt of commissions by reason of the purchase of shares of stock from the Belle Corporation; and acquisition of unexplained wealth.

To my mind, the Amended Information only makes out a case of bribery "in toleration or protection of illegal gambling." While he is being charged for the "crime of Plunder, defined and penalized under R.A. No. 7080," his alleged participation therein is limited to what is specified under paragraph (a) of the Amended Information.

The essence of the law on plunder lies in the phrase "combination or series of overt or criminal acts." The determining factor of R.A. No. 7080, as can be gleaned from the Record of the Senate, is the plurality of the overt acts or criminal acts under a grand scheme or conspiracy to amass ill-gotten wealth. Thus, even if the amassed wealth equals or exceeds fifty million pesos, a person cannot be prosecuted for the crime of plunder if he performs only a single criminal act.[13]

It is the majority's position that since there is an allegation of conspiracy at the inception of the Amended Information, the criminal acts recited in paragraphs (b), (c) and (d) pertain to petitioner as well, the act of one being the act of all. This is an obvious non sequitur. Even the Amended Information, on its face, cannot admit such a construction.

First, it bears noting that the Amended Information named the co-conspirators of former President Estrada individually and separately in each of the four predicate offenses. Paragraph (a) named petitioner Jose "Jinggoy" Estrada, "Atong" Ang, Yolanda T. Ricaforte, Edward Serapio, John Does and Jane Does as co-conspirators in the crime of bribery. Paragraph (b) named Alma Alfaro, "Atong" Ang, Eleuterio Ramos Tan, Delia Rajas and other John Does and Jane Does as co-conspirators in the crime of malversation of public funds representing a portion of the tobacco excise tax share allocated to the Province of Ilocos Sur. Paragraph (c) and (d) named John Does and Jane Does as co-conspirators in the purchase of the Belle's shares and in the acquisition of ill-gotten wealth in the amount of P3,233,104,173.17 under the account name "Jose Velarde."

Is it logical to infer from the Amended Information the existence of a single continuing conspiracy of plunder when the factual recital thereof individually and separately named the co-conspirators in each of the predicate offenses? I must reecho my answer in G.R. No. 148965, i.e., an outright no. A single agreement to commit several crimes constitutes one conspiracy. By the same reasoning, multiple agreements to commit separate crimes constitute multiple conspiracies. To individually and separately name the co-conspirators in each of the predicate offenses is to reveal the absence of a common design. The explicit clustering of co-conspirators for each predicate offense thwarts the majority's theory of a single continuing conspiracy of plunder. It reveals a clear line segregating each predicate offense from the other. Thus, the act of one cannot be considered as the act of all.

Second, the allegation of conspiracy at the inception of the Amended Information basically pertains to former

President Estrada as the common key figure in the four predicate offenses. Allow me to quote the pertinent portion, thus:

“That during the period from June 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, then a public officer, being then the President of the Republic of the Philippines, by himself and/or in connivance/conspiracy with his co-accused, who are members of his family, relatives by affinity or consanguinity, business associates, subordinates and/or other persons, by taking undue advantage of his official position, authority, relationship, connection, or influence, did then and there willfully, unlawfully and criminally amass, accumulate and acquire by himself, directly or indirectly, ill-gotten wealth in the aggregate amount or total value of four billion ninety seven million eight hundred four thousand one hundred seventy three pesos and seventeen centavos [P4,097,804,173.17], more or less, thereby unjustly enriching himself or themselves at the expense and to the damage of the Filipino people and the Republic of the Philippines through any or a combination or a series of overt OR criminal acts, or similar schemes or means, described as follows: x x x”

From the foregoing allegation, it can be reasonably construed that former President Estrada conspired with all the accused in committing the four predicate offenses. However, whether his co-accused conspired with him jointly or individually for the commission of all, or some or one of the predicate offenses is a question that maybe answered only after a reading of the entire Amended Information. I note with particularity the phrase in the Amended Information stating, “by himself and/or[14] in connivance/conspiracy with his co-accused.” The phrase indicates that former President Estrada did not, in all instances, act in connivance with the other accused. At times, he acted alone. Consequently, as alleged in the succeeding paragraphs (a), (b), (c) and (d), his co-accused conspired with him individually and not jointly. Petitioner Serapio cannot therefore be associated with the former President in all the latter’s alleged criminal activities.

Of course, I cannot ignore the use of the phrase “on several instances” and “aggregate amount of P545,000,000.00” in paragraph (a) of the Amended Information. At first glance, this may be construed as attributing to petitioner Serapio a “combination or series of overt act.” However, a reading of the Amended Information, in its entirety, readily reveals that the said phrases pertain to former President Estrada, the principal accused in the case. Allegedly, the former President, on several instances, received or collected an aggregate amount of P545,000,000.00, more or less from illegal gambling in the form of gift, share, percentage, kickback or any form of pecuniary benefit “by himself and/or in connivance with co-accused Charlie “Atong” Ang, Jose “Jinggoy” Estrada, Yolanda T. Ricaforte, petitioner Serapio and John Does and Jane Does. We have already explained the implication of the phrase “by himself and/or in connivance.” Consequently, the acts committed by former President Estrada on the several instances referred to cannot automatically be attributed to petitioner.

Third, petitioner’s criminal intent to advance the unlawful object of the conspiracy (plunder) is not sufficiently alleged in the factual recitals of the Amended Information. Corollarily, the intent required is the intent to advance or further the unlawful object of the conspiracy.[15] This means that so far as the relevant circumstances are concerned, both parties to the agreement must have mens rea.[16] There is no conspiracy to commit a particular crime unless the parties to the agreement intend that the consequences, which are ingredients of that crime, shall be caused.[17] In the present case, while there is an allegation that former President Estrada “willfully, unlawfully and criminally”[18] amassed ill-gotten wealth in the aggregate amount of P4,097,804,173.17, none is mentioned with regard to petitioner. There is nothing in the Amended Information that suggests whether or not petitioner has the mens rea to engage in the commission of the serious crime of plunder. Indeed, there are no allegations that he “willfully, unlawfully or criminally” joined with the rest of the accused to amass ill-gotten wealth. This renders the Amended Information fatally defective with respect to petitioner. Every crime is made up of certain acts and intent: these must be set forth in the complaint with reasonable particularity.[19] Imperatively, an information

charging that a defendant conspired to commit an offense must allege that the defendant agreed with one or more persons to commit the offense.[20]

And fourth, the statement in the accusatory portion of the Amended Information cumulatively charging all the accused of the crime of Plunder cannot be given much weight in determining the nature of the offense charged. It is a jurisprudentially-embedded rule that what determines the “nature and cause of accusation” against an accused is the crime described by the facts stated in the information or complaint and not that designated by the fiscal in the preamble thereof.[21] In the recent En Banc ruling in *Lacson vs. Executive Secretary*,[22] citing the 1954 case of *People vs. Cosare*[23] and *People vs. Mendoza*,[24] this Court held:

“The factor that characterizes the charge is the actual recital of the facts. The real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information.”[25]

Thus, in the event that the appellation of the crime charged, as determined by the public prosecutor, does not exactly correspond to the actual crime constituted by the criminal acts described in the information to have been committed by the accused, what controls is the description of the said criminal acts and not the technical name of the crime supplied by the public prosecutor.[26]

There is a caveat that an information under the broad language of a general conspiracy statute must be scrutinized carefully as to each of the charged defendants because of the possibility, inherent in a criminal conspiracy charge, that its wide net may ensnare the innocent as well as the culpable.[27]

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.[28] 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.[29]

Corollarily, petitioner prays in G.R. No. 148468 for this Court to issue a writ of habeas corpus. The Amended Information being fatally defective, it is imperative that petitioner be dropped from the Amended Information and proceeded against under a new one charging the proper offense. In the absence of a standing case against him, the issuance of a writ of habeas corpus is in order.”[30]

WHEREFORE, I vote to GRANT the petitions in G.R. No. 148769 and G.R. No. 148468.

[1] Entitled “People of the Philippines, Plaintiff-versus- Joseph Ejercito Estrada a.k.a. “Asiong Salonga” and a.k.a. “Jose Velarde” Former President of the Philippines, Jose ‘Jinggoy’ Estrada, Charlie ‘Atong’ Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, John Doe a.k.a Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, John Does and Jane Does, Accused”; For Plunder.

[2] Annex “C,” Petition, Rollo, pp. 46-49.

[3] Entitled “Jose “Jinggoy” E. Estrada, petitioner, -versus- Sandiganbayan (Third Division), People of the Philippines and Office of the Ombudsman, respondents.”

[4] 16 Am Jur 2d § 11, p. 209.

[5] Id.

[6] 365 So. 2d 1035 (1979).

[7] 1) The indictment involved in the present case is clearly deficient under the criteria set forth by this Court in *State vs. Smith*, 240 So. 2d 807 (Fla. 1970): “An indictment or information for conspiracy must contain a statement of the facts relied on as constituting the offense in ordinary and concise language, with as much certainty as the nature of the case will admit, in such a manner as to enable a person of common understanding to know what is intended, and with such precision that the accused may plead his acquittal or conviction to a separate indictment or information based on the same facts.”

Some of the more patent flaws found in the present indictment are as follows:

- 1) It is impossible to tell whether it charges that all four appellants jointly conspired with “Rothstein... or MacLean, or both,” or whether there were two conspiracies, one between some of the appellants and Rothstein, and the other between the remaining appellants and MacLean;

xxx xxx

The prejudice to appellants resulting from the defective conspiracy count is itself sufficient to mandate a new trial on the remaining charges. However, the record before us is replete with errors, several of which individually and all of which cumulatively would warrant reversal. x x x.”

[8] Indictment which charged defendant with conspiracy to commit a felony which failed to state with whom defendant had allegedly conspired, failed to state unlawful object of charged conspiracy, and failed to state nature of charged conspiracy under law since it did not sufficiently inform defendant of charges against him.

[9] 82 P. 2d 541.

[10] *Wilson vs. United States*, 190 Federal Reporter 427 (1911).

[11] *United States vs. Welch*, 656 F 2d 1039 (1981).

[12] 41 Am Jur 2d § 202.

[13] “Senator Paterno. Mr. President, not too clear yet on the reason for trying to define a crime of plunder. Could I get some further clarification?

Senator Tanada. Yes, Mr. President.

Because of our experience in the former regime, we feel that there is a need for Congress to pass the legislation which would cover a crime of this magnitude. While it is true, we already have the Anti-Graft Law. But that does not directly deal with plunder. That covers only the corrupt practices of public officials as well as their spouses and relatives within the civil degree, and the Anti-Graft law as presently worded would not adequately or sufficiently address the problems that we experienced during the past regime.

Senator Paterno. May I try to give the Gentleman, Mr. President, my understanding of the bill? Senator Tanada. Yes.

Senator Paterno. I envision that this bill or this kind of plunder would cover a discovered interconnection of certain acts, particularly, violations of Anti-Graft and Corrupt Practices Act when, after the different acts are looked at, a scheme of conspiracy can be detected, such scheme or conspiracy consummated by the different

criminal acts or violations of Anti-Graft and Corrupt Practices Act, such that the scheme or conspiracy becomes a sin, as a large scheme to defraud the public or rob the public treasury. It is parang robo and banda. It is considered as that. And, the bill seeks to define or says that P100 million is that level at which ay talagang sobra na dapat nang parusahan ng husto. Would it be a correct interpretation or assessment of the intent of the bill?

Senator Tanada. Yes, Mr. President. The fact that under existing law, there can be only one offense charged in the information, that makes it very cumbersome and difficult to go after these grafters if we would not come out with this bill. That is what is happening now; because of that rule that there can be only one offense charged per information, then we are having difficulty in charging all the public officials who would seem to have committed these corrupt practices. With this bill, we could come out with just one information, and that would cover all the series of criminal acts that may have been committed by him.

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Senator Romulo. To follow up the interpolations of Senator Paterno and Maceda, this crime of plunder as envisioned here contemplates of a series or a scheme as responded by the distinguished Sponsor.

Senator Tanada. That is correct, Mr. President. (Record of Senate, June 5, 1989, Vol. IV, No. 140, p. 1315)

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Senator Romulo. Mr. President, I was going to suggest prior to Senator Maceda that on line 24: "SHALL THROUGH ONE overt or criminal act OR..." "I was just thinking of one which is really not a "series.",

The President. If there is only one, then he has to be prosecuted under the particular crime. But when we say "acts of plunder" there should be, at least, two or more. (Record of the Senate, June 6, 1989, Vol. IV, No. 141, p. 1399).

[14] The use of "or" - a function word to indicate an alternative between different or unlike things, state, or actions negates absolute commonality of design among the former President and all his co-accused. Webster Third New International Dictionary, 1993, p. 1585.

[15] Establishing the intent necessary to sustain a conviction for conspiracy requires showing not only that the conspirators intended to agree but also that they intended to commit the elements of the underlying offense.

[16] In *Estrada vs. Sandiganbayan*, G.R. No. 148560, November 19, 2001, Justice Josue N. Bellosillo quoting from the Concurring Opinion of Justice Vicente V. Mendoza, held that "[p]lunder is a malum in se, requiring criminal intent. Precisely because the constitutive crimes are mala in se the element of mens rea must be proven in a prosecution for plunder. It is noteworthy that the amended information alleges that the crime was committed "wilfully, unlawfully and criminally." It thus alleges guilty knowledge on the part of petitioner (Joseph Ejercito Estrada).

[17] Smith, Hogan, Criminal Law, Sixth Edition, 1988, p. 264.

[18] This signifies the allegation of mens rea.

[19] *Pecho vs. People*, 262 SCRA 518 (1996).

[20] 16 Am Jur 2d § 33.

[21] *United States vs. Lim San*, 17 Phil. 273 (1910); *United States vs. de Guzman*, 19 Phil. 350 (1911).

[22] 301 SCRA 298 (1999).

[23] 95 Phil. 657, 660 (1954).

[24] 175 SCRA 743 (1989).

[25] Lacson vs. Executive Secretary, 301 SCRA 298 (1999).

[26] Buhat vs. Court of Appeals, 265 SCRA 701 (1996).

[27] 16 Am Jur 2d § 32, p. 245. Dennis v. U.S. 384 U.S. 855, 86 Ct. 1840, 16 L Ed. 2d 973 (1966).

[28] Kotteakos vs. U.S., 328 U.S. 750 (1946).

[29] Goldberg vs. State, *supra*.

[30] Aleria, Jr. vs. Velez, 298 SCRA 611 (1998).

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