



Republic of the Philippines
Supreme Court
Office of the Court Administrator
Manila

OCA CIRCULAR NO. 194-2018

**TO : ALL JUDGES AND CLERKS OF COURT
OF THE FIRST AND SECOND LEVEL
COURTS**

**SUBJECT : APPROVAL OF THE RULE ON
PRECAUTIONARY HOLD DEPARTURE
ORDER**

In its 7 August 2018 Resolution in **A.M. No. 18-07-05-SC** (*Rule on Precautionary Hold Departure Order*), the Court **RESOLVED** to **APPROVE** the **Rule on Precautionary Hold Departure Order**.

The said Resolution, appended herein as Annex "A", was published in the *Philippine Daily Inquirer* and the *Philippine Star* on 1 September 2018 and shall take effect on 16 September 2018.

For your information, guidance and strict compliance.

10 September 2018


JOSE MIDAS P. MARQUEZ
Court Administrator



Republic of the Philippines
SUPREME COURT
Manila

EN BANC

A.M. No. 18-07-05-SC

**RULE ON PRECAUTIONARY
HOLD DEPARTURE ORDER**

RESOLUTION

Acting on the proposed Rule on Precautionary Hold Departure Order, the Court Resolved to **APPROVE** the same.

The Rule shall take effect within fifteen (15) days following its publication in two (2) newspapers of general circulation.

August 7, 2018.

Handwritten signature of Antonio T. Carpio in black ink.

ANTONIO T. CARPIO
Senior Associate Justice

Handwritten signature of Presbitero J. Velasco, Jr. in black ink.

PRESBITERO J. VELASCO, JR.
Associate Justice

Handwritten signature of Teresita J. Leonardo-de Castro in black ink.

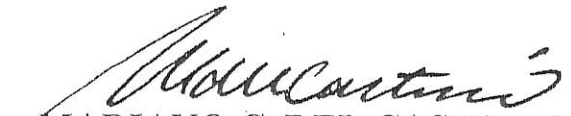
TERESITA J. LEONARDO-DE CASTRO
Associate Justice


Handwritten signature of Diosdado M. Peralta in black ink.

DIOSDADO M. PERALTA
Associate Justice

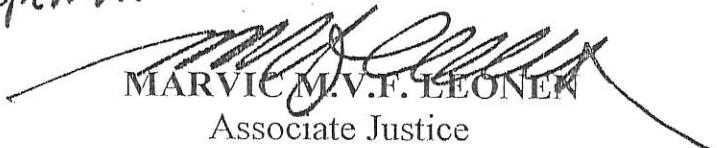
Handwritten signature of Lucas P. Bersamin in black ink.

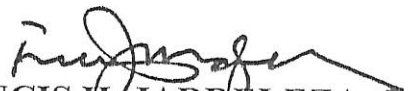
LUCAS P. BERSAMIN
Associate Justice


 MARIANO C. DEL CASTILLO
 Associate Justice


 ESTELA M. PERLAS-BERNABE
 Associate Justice

I dissent. See attached separate opinion



 MARVIC M.V.F. LEONEN
 Associate Justice


 FRANCIS IL. JARDELEZA
 Associate Justice

(On Leave)
 ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice


 NOEL GIMENEZ TIJAM
 Associate Justice


 ANDRES B. REYES, JR.
 Associate Justice


 ALEXANDER G. GESMUNDO
 Associate Justice

PROPOSED RULE ON PRECAUTIONARY HOLD DEPARTURE ORDER

Section 1. *Precautionary Hold Departure Order.* – is an order in writing issued by a court commanding the Bureau of Immigration to prevent any attempt by a person suspected of a crime to depart from the Philippines, which shall be issued *ex-parte* in cases involving crimes where the minimum of the penalty prescribed by law is at least six (6) years and one (1) day or when the offender is a foreigner regardless of the imposable penalty.

Section 2. *Where filed.* – The application for a precautionary hold departure order may be filed by a prosecutor with any regional trial court within whose territorial jurisdiction the alleged crime was committed: *Provided*, that for compelling reasons, it can be filed with any regional trial court within the judicial region where the crime was committed if the place of the commission of the crime is known; *Provided, further*, that the regional trial courts in the City of Manila, Quezon City, Cebu City, Iloilo City, Davao City, and Cagayan de Oro City shall also have the authority to act on applications filed by the prosecutor based on complaints instituted by the National Bureau of Investigation, regardless where the alleged crime was committed.

Section 3. *Finding of probable cause.* – Upon motion by the complainant in a criminal complaint filed before the office of the city or provincial prosecutor, and upon a preliminary determination of probable cause based on the complaint and attachments, the investigating prosecutor may file an application in the name of the People of the Philippines for a precautionary hold departure order (PHDO) with the proper regional trial court. The application shall be accompanied by the complaint-affidavit and its attachments, personal details, passport number and a photograph of the respondent, if available.

Section 4. *Grounds for issuance.* – A precautionary hold departure order shall not issue except upon determination by the judge, in whose court the application is filed, that probable cause exists, and there is a high probability that respondent will depart from the Philippines to evade arrest and prosecution of crime against him or her. The judge shall personally examine under oath or affirmation, in the form of searching questions and answers in writing, the applicant and the witnesses he or she may produce on facts personally known to them and attaching to the record their sworn statements.

If the judge finds that probable cause exists and there is a high probability that the respondent will depart, he or she shall issue the PHDO and direct the Bureau of Immigration to hold and prevent the departure of the respondent at any Philippine airport or ports. Otherwise, the judge shall order the dismissal of the application.

Section 5. *Preliminary finding of probable cause.* – Since the finding of probable cause by the judge is solely based on the complaint and is specifically issued for the purpose of issuing the PHDO, the same shall be without prejudice to the resolution of the prosecutor of the criminal complaint considering the complaint-affidavit, counter-affidavit, reply-affidavit, and the evidence presented by both parties during the preliminary investigation. If the prosecutor after preliminary investigation dismisses the criminal complaint for lack of probable cause then the respondent may use the dismissal as a ground for the lifting of the PHDO with the regional trial court that issued the order. If the prosecutor finds probable cause and files the criminal information, the case with the court that issued the PHDO, on motion of the prosecutor shall be consolidated with the court where the criminal information is filed.

Section 6. *Form and validity of the precautionary hold departure order.* – The precautionary hold departure order shall indicate the name of the respondent, his or her alleged crime, the time and place of its commission, and the name of the complainant. (See Annex “A” herein). A copy of the application, personal details, passport number, photograph of the respondent, if available, shall be appended to the order. The order shall be valid until lifted by the issuing court as may be warranted by the result of the preliminary investigation.

The court shall furnish the Bureau of Immigration with a duly certified copy of the hold departure order within twenty-four (24) hours from issuance.

Section 7. *Lifting of the Order.* – The respondent may file a verified motion before the issuing court for the temporary lifting of PHDO on meritorious ground; that, based on the complaint-affidavit and the evidence that he or she will present, there is doubt that probable cause exists to issue the PHDO or it is shown that he or she is not a flight risk: *Provided*, that the respondent posts a bond; *Provided, further*, that the lifting of the PHDO is without prejudice to the resolution of the preliminary investigation against the respondent.

Section 8. *Bond.* – Respondent may ask the issuing court to allow him or her to leave the country upon posting of a bond in an amount to be determined by the court subject to the conditions set forth in the Order granting the temporary lifting of the PHDO.

Section 9. *Effectivity.* – This Rule shall take effect within fifteen (15) days following its publication in two (2) newspapers of general circulation in the Philippines.

REPUBLIC OF THE PHILIPPINES
Regional Trial Court

PEOPLE OF THE PHILIPPINES,
Plaintiff,

PHDO NO. 18-_____

- versus -

A.B.,

Respondent.

X ----- X

PRECAUTIONARY HOLD DEPARTURE ORDER

The above-entitled petition having been filed against the respondent;

- SURNAME -
- GIVEN NAME -
- ALIAS -
- MIDDLE NAME -
- DATE OF BIRTH -
- PLACE OF BIRTH -
- RESIDENCE/S -
- NATIONALITY -
- PASSPORT NUMBER -
- COMPLETE TITLE/DOCKET NUMBER OF CASE* -
- WHERE PENDING -
- NATURE OF THE CASE -

and appears to the satisfaction of the court after examining under oath (name of applicant), his/her witness/es, supporting affidavits and documents, that there is probable cause to believe that respondent will depart from the Philippines to evade arrest and prosecution of crime against him or her, **HEREBY ORDERS**, the Commissioner of the Bureau of Immigration and Deportation to hold the departure from the Philippines of the above-named respondent and to include his/her name in the Hold Departure List of the said office.

Let copy of this Order be furnished to the Commissioner of the Bureau of Immigration and Deportation.

SO ORDERED.

August _____, 2018

RTC Judge

* Docketed I.S. No. _____ of the Preliminary Investigation in the case.