



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

RDTL

TRIBUNAL DISTRITAL de DILI

Special Panel for Serious crimes

Before:

Judge Sylver Ntukamazina

Case no: 4b/2001

The Public Prosecutor

Versus

Sabino Gouveia Leite

Decision on the application for conditional release of Sabino Gouveia Leite

For the Prosecution:

Ms. Shyamala Alagendra

For the Defense:

Ms. Pamela Reusch

Mr. Ramavarma Thamburan

A. Procedural background

- 1 On 9 December 2002, the legal representatives for Sabino Gouveia Leite filed an application for release of their client pursuant to Section 43 of UNTAET Regulation 2000/30 as amended by UNTAET Regulation 2001/25. The grounds for the release are outlined in the written application on the file.
- 2 On 20 November 2002, the Special Panel found the convict person guilty for crimes against humanity (3 charges of imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, 1 charge of torture and 1 charge of other inhumane acts intentionally causing **great suffering** or serious injury to body or mental or physical health) and **sentenced** him to 3 (three) years of imprisonment.
- 3 The legal representatives of Sabino Gouveia Leite provided also the Court a report from Becora Prison Manager on the conduct of the Convict person.
- 4 Pursuant to Section 43.1 UNTAET Regulation 2000/30, the Court decided on 10 December 2002 to hold a **hearing on Tuesday 17 December 2002 at 9 AM in order to check whether the requirements for the conditional release of the convict person are met.**

B. Submissions of the parties

- 5 During the hearing held on 17 December 2002, the Defense confirmed the **written submissions**. The defense bases the request on Section 43.1(a), (b) and (c) UNTAET Regulation 2000/30, and asked the release of the accused on three grounds relating to:

(a) The length of the period of detention of the convict: the defense advanced that the convict has served two-third of his sentence. He was arrested on 4 December 2000 and has been in custody since that date. On 4 December 2002, he has served two-third of his sentence.

(b) The good behavior of the convict in prison: The Defense submitted that a favorable report on the conduct of Sabino Gouveia Leite has been presented

to the Court by correctional authorities. According to the Defense, the convict has been behaving and working well in prison while serving his sentence as certified to by Mr. Carlos Freitas Sarmiento, Becora Prison Manager.

(C) The fact that the convict is not a danger to the society: the Defense believes that the convict will not pose any further danger to the safety or security of the public based on the good behavior he has been exhibiting while serving his sentence.

6 The prosecution raised a preliminary issue relating to the composition of the Court and the jurisdiction of a single judge to hear the present application. She underlined that any serious crime matter is to refer to a panel of judges. The only exception is when the law provides that a single judge can hear the matter. According to the prosecution, the matter referred to in Section 43 UNTAET Regulation 2000/30 shall be assigned to a Panel of judges rather than a single judge.

7 The second issue raised by the **Public** Prosecutor relates to the conditions for release. The Prosecutor told the Court that she does not have any objection with respect to the conditional release of the convict. She asked the Court to take into account the peculiar nature of the situation where the convict were charged with other accused whose trial is still going on. She recalled that Sabino Gouveia Leite's case was separated from the trial of Jose Cardoso's case. If the convict is going to be returning in Lolotoe, the Court will have to take into account in issuing the decision some requirements for a fair trial in Jose Cardoso's case. She then requested the Court that the convict be release on conditions provided in Section 43.2 of UNTAET Regulation 2000/30 and applied particularly for the following conditions:

* Sabino be forbidden to falsify the premises underlined in the indictment as scene of the crimes in Jose Cardoso 's case as the KODIM Compound, PKK Building, House of Jhoni Franca, House of Jose Cardoso, previous residence of the Koramil, and the house of Sabino Gouveia Leite. There is a request from the defense still pending and relating to the visit of the scene of the crime, which include, among other places the house of

Sabino Gouveia Leite. The prosecution will therefore request the Court to order that Sabino will maintain his house in its present state.

* Request the Convict not to leave the jurisdiction of the Court without authorization of the Court. She also underlined that the most practical way to make sure that the accused stays within the jurisdiction is for him to report to CIVPOL as often as the Court will decide until the expiration of his term of imprisonment.

* To ask the convict not to contact any of the witnesses in Jose 's Cardoso case, witnesses who have already testified or who are going to testify before the Court. The parties have the right to ask the Court to call back any of the witnesses who testified for any additional testimony.

8 With respect to the conditions for release, the Defense submitted that it would be for the Court to appreciate. However, the defense underlined that there is no need to protect the witnesses in the case of Jose Cardoso, former co-accused of the convict. The defense also does not see any need to order the convict to report to CIVPOL. Such a condition is necessary for the accused persons in order to avoid from them to flee once released. That is not the case in the present case where the applicant is a convict.

C. Relevant provision of the law with respect to the composition of the Court and the conditional release

9 With respect to the conditional release after trial, Section 43 provides that: " 43.1. Upon request by the convict or his or her legal representative, and after a hearing, a Court may order the conditional release of a convict who has been sentenced to a term of imprisonment where: (a) two thirds of the term of imprisonment has been completed; (b) a favorable report on the conduct of the convict has been presented to the Court by correctional authorities; and (c) the convict poses no danger to public security or safety. 43.2. An order for conditional release under the present section may include any measure that may promote the peaceful integration of the convict into society, including one or more of the following: (a) a prohibition on the convict to appear in specified places; (b) a prohibition on the convict from associating with persons identified in the order; (c) a prohibition on the convict from leaving the jurisdiction of the Court

without previous authorization from the Court; or a requirement that the convict appear regularly before the Court or other designated authorities for a certain period of time."

- 10 With respect to the jurisdiction of a single judge, Section 48 relating to the supervision and the execution of prison sentences provides that: "*48.1 All matters relating to the supervision and the execution of a prison sentence shall be decided by the presiding judge of the Panel or the individual judge who pronounced the sentence. In the event that such judge is no longer available or otherwise unable to exercise his or her functions, the judge Administrator will designate a judge to deal with such matters.*"
- 11 This Court will deal first with the issue of the jurisdiction of a single judge, before going to the substantial matter relating to the conditions for release.

B. The jurisdiction of a single judge.

- 12 The matter on issue in the present case is relating to the supervision and execution of a prison sentence. Pursuant to section 48.1UNTAET Regulation 2000/30, a single judge shall decide that kind of issue, namely the presiding judge of the Panel or the individual judge who pronounced the sentence. In the present case, the Presiding judge of the panel who pronounced the sentence is indeed the one who is dealing with the present matter. The competence of a single judge to deal with this matter is therefore obvious and is conform to the jurisprudence of this Court¹.

With respect to the conditions of release of the convict person

- 13 Pursuant to Sect. 43.1UNTAET Regulation 2000/30, a convict may be granted conditional release following trial after (a) two-thirds of the term of imprisonment has been completed; (b) a favorable report on conduct; and (c) where there is no danger to public security or safety.

¹ Special Panel for Serious Crimes, Prosecutor Vs. Joni Marques and 9 others, Decision on the application for conditional release of Alarico Fernandes, 17 April 2002

- 14 This Court is of the opinion that those conditions have to be satisfied separately. . In enumerating the conditions, Section 43.1 says "*where: (a)...(b)... and (c)*". The reading of the section shows clearly that each and all those conditions have to be fulfilled in order for the Court to order a conditional release.
- 15 It is true that the convicted person has been detained continuously from 4 December 2000 until now. He has therefore served the two-thirds of his term on 4 December 2002. This was clearly shown in the judgement of the case and in the report from the prison, which mention that the two thirds of the term of imprisonment has been served on 4 December 2002. It is therefore obvious that the first condition for release provided by the law is fulfilled.
- 16 The report of the conduct of Sabino Gouveia Leite has been submitted to the Court. It says that: "*Since Inmate Goveia Sabino Leite arrived to Becora Prison his conduct , behavior and attitude has been of a good standard. He has been cooperating with the prison staff and has worked well during his time in prison(...)*" The Court is convinced that the conduct and the behaviour of the convict person in Prison has been until now good. The second condition for release of the convict is also fulfilled.
- 17 With respect to the third condition and as underlined by the Prison Manager, there is no guarantee that the inmate will not pose any danger to public safety or security. It is not possible to determine in advance what will be the future behavior of the convicted persons. However, the fact that he pleaded guilty to the charge, expressed remorse for the crimes that occurred and asked for forgiveness, aided in the administration of justice by cooperating with the Court and providing full disclosure of the crimes that occurred, and the good behavior the convict has been exhibiting while serving his sentence , would suggest that Sabino Gouvia Leite will continue to adopt a good behavior once released, and will cause no danger to public security or safety.
- 18 However, and in order to promote the peaceful integration of the convict person into society, and to prevent any future misconduct, it is necessary that the court forbid to Sabino Gouveia Leite to

commit any other offence and to pose any danger to public safety or security for a period of one year.

- 19 It is also necessary for the interest of justice, to forbid Sabino Gouveia Leite to contact, to manipulate or to interfere with witnesses in the case of his former co-accused Jose Cardoso. This measure relates to the witnesses who will come to testify as well as the witnesses whose testimonies were heard by the Court, since, as underlined by the Public Prosecutor, there is a possibility that those witnesses be recalled to make any additional testimony in the case the Court deems it necessary on its own motion or at the request of the parties.
- 20 Since the convict will go back to Lolotoe once released, and in order to protect evidence in the case of Jose Cardoso, former co-accused of the convict, the Court deems relevant the request from the prosecution to order the convict not to pose any act of the nature to taint, to destroy or falsify the premisses identified in the indictment as scene of the crime, like Kodim compound, PKK building, House of Jhoni Franca, House of Jose Cardoso, previous residence of Koramil and the own house of the convicted person which has to be maintain as it is.
- 21 In order to ensure the good behavior of the convict after release, the Court will prohibit him to leave the jurisdiction of this Court without prior authorization of the same Court, until the completion of one year. For the purpose of facilitating the control of the respect of the condition, the Court will order Sabino Gouveia Leite to report to the nearest civpol once a month.
- 22 Conditional release shall terminate if the convict commits a crime or violates any of the conditions established in the present order for conditional release, in which case he shall immediately continue his original term of imprisonment.
- 23 For the aforementioned reasons, **the Court:**
- 24 Decides that the application for conditional release of Sabino Gouveia Leite is granted with the following conditions valid for a period starting today and expiring on the 4th December 2003:

a) That Sabino Gouveia Leite does not commit any other offence and not pose any danger to public safety or security.

b) That Sabino Gouveia Leite does not contact, manipulate or interfere with witnesses in the case of his former co-accused Jose Cardoso.

c) That Sabino Gouveia Leite not pose any act of the nature to taint, to destroy or to falsify the premisses identified in the indictment as scene of the crime like Kodim compound, PKK building, House of Jhoni Franca, House of Jose Cardoso, previous residence of Koramil and the own house of the convicted person which has to be maintain as it is.

d) That Sabino Gouveia Leite not leave the jurisdiction of this Court without prior authorization of the Court, and to report to the nearest civpol once a month.

RDTL
December 2002
Tribunal Distrital de Díli
Judge of Law
Itukamazina
