

LJN: BB3484, Rechtbank 's-Gravenhage , 09.750006-06 (english translation)

Datum uitspraak: 13-09-2007
Datum publicatie: 13-09-2007
Rechtsgebied: Straf
Soort procedure: Eerste aanleg - meervoudig
Inhoudsindicatie: Termination of the accused's remand in custody. The accused was remanded in custody on the charges of participation of , alternatively incitement to the intentional and premeditated murders of R.K., A.G.T. and/or S.A.O. as well as the attempts to do so to R.M. and/or E.R. y M. The files do not provide a sufficient basis for the suspicion that the accused, while staying in the Netherlands, committed the offences he is charged with in deliberate and close co-operation with the perpetrators in the Philippines. Neither can indications be found for the presence of grave presumptions with regard to incitement to these offences.

Uitspraak

DISTRICT COURT OF THE HAGUE
CRIMINAL LAW SECTION

Public Prosecutor's Office number: 09.750006-06

On 7 September 2007, the Public Prosecutor submitted a demand aiming at an order to be issued for detention of:

[the accused]
born in [place of birth] on [date of birth]

currently held in the remand prison in The Hague (Unit 1).

The Court has examined the documents in this case.

On 7 September 2007, the accused and his counsel, as well as the Public Prosecutor were heard in camera.

The accused was remanded in custody on the charges of participation of, alternatively incitement to the intentional and premeditated murders of [R.K.] on 23 January 2003 (count 1), [A.G.T.] and/or [S.A.O.] on 26 September 2004 (count 3) as well as the attempts to do so of [R.M.] and/or [E.R. y M.] on 23 January 2003 (count 2).

The Public Prosecution Service takes the point of view that prior to, and at the time of, the commission of these serious offences, the accused was the chairman of the Communist Party of the Philippines (CPP) and the Central Committee (CC), being a party body within the CPP, as well as that within the party structure, the CC takes the decisions and that the accused, being the chairman of both the CPP and the CC, for that reason may be held criminally responsible for the offences.

With regard to the question to be answered primarily, to wit if there are grave presumptions as provided for in article 67, third paragraph of the Code of Criminal Procedure, the Court considers the following.

It is certain that the acts concerned were committed in the Philippines. In the opinion of the Court, it is clear from the investigation that the said acts related to disagreements within the CPP and that the decision to commit these offences was made within the party structure of the CPP, in which other persons and bodies were also involved. The question that will have to be answered is if, and if so, in what way, the accused was involved and may be considered as a co-perpetrator of these acts.

In order to assume participation in the commission of acts within the meaning of article 47 of the Penal Code, there should be deliberate and close co-operation and a joint commission of the offence.

The police files submitted to the court include many indications for the point of view that the accused has been involved in the CC of the CPP and her military branch, the New People's Army (NPA). There are also indications that the accused is still playing a leading role in the (underground) activities of the CC, the CPP and the NPA.

Without prejudice to the justified suspicion that the accused during the period described in the charges played a leading role in the aforementioned organisations, the files nevertheless do not provide a sufficient basis for the suspicion that the accused, while staying in the Netherlands, committed the offences he is charged with in deliberate and close co-operation with the perpetrators in the Philippines.

For that reason, the Court considers that the grave presumptions with regard to participation in the commission of the murders are not present. Neither can indications be found for the presence of grave presumptions with regard to incitement to these offences. The statements of the widows and the marksmen, to which the Public Prosecution Service appeals, only refer to the fact that they assume that the murders have been committed by order of the CC of the CPP and therefore an order originating from the accused being the chairman. However, that is insufficiently concrete to consider that grave presumptions are present.

The grounds that have led to the remand in custody of the accused are not, in any case no longer, present in the opinion of the Court, so that the demand should be rejected and the remand in custody should be terminated with immediate effect.

DECISION :

The Court rejects the demand of the Public Prosecutor and recommends termination of the accused's remand in custody.

MESSRS. POUSTOCHKINE LL.M., president, SCHAAF LL.M. and STEENHUIS LL.M., judges in the presence of MS KOK LL.M., clerk of the court, pronounced this decision in camera in this Court on 13 September 2007.
