REPUBLIC OF ITALY

COURT OF GROSSETO

OFFICE OF THE MAGISTRATE IN CHARGE OF PRELIMINARY INQUIRIES

The magistrate in charge of preliminary inquiries, Dr. Valeria MONTESARCHIO,

having seen the request of the Public Prosecutor, received on 16/01/2012 at 1:55 PM, for validation of the detention of:

 SCHETTINO, Francesco, born in Naples on 14 November 1960, with counsel for the defence of choice Bruno LEPORATTI, attorney of law of the Bar of Grosseto,

for the following violation:

a) 113, in conjunction with Ciro Ambrosio, 449(2) in reference to Art. 428, 589(3) of the Penal Code, for having, in co-operation with one another, Schettino as captain of the ship Costa Concordia, Ambrosio as first deck officer (responsible for the watch) – owing to culpable behaviour consisting of imprudence, negligence and incompetence and in violation of the regulations of the sector (and in particular of Art. 6 of Law No. 1085 of 27 December 1977, for having maintained a speed over 15 knots, even though in the proximity of obstacles, in a way such as not to be able to act in an appropriate and efficient manner so as to avoid collisions and to halt the craft within a distance appropriate to the circumstances and to the conditions of the same time thus causing the death of Tomas Alberto Costilla Mendoza, Jean Pierre Micheaud and Francis Servel, who, fallen overboard, perished due to drowning or due to hypothermia.

On Isola del Giglio, on 13 January 2012.

b) 81(1) and 591 of the Penal Code, for having abandoned about three hundred persons (passengers on the cruise ship Costa Concordia), unable to fend for themselves (in particular, since still aboard the said motor ship, in the process of shipwreck and in the night-time, who he was supposed to take care of inasmuch as captain of the said motor ship.

On Isola del Giglio, on 13 January 2012.

c) 1097 of the Code of Navigation, for not having been the last to leave the motor ship Costa Concordia of which he was captain, during the abandonment of the same (in danger, being in the process of shipwreck)

On Isola del Giglio, on 13 January 2012. ascertained on the day.

Having heard at the validation hearing of 17/01/2012 the Public Prosecutor, the detainee and his counsel for the defence, pronounced the following

ORDER

As concerns the presuppositions for the decree of detention pursuant to Art. 384 of the Code of Criminal Procedure, the magistrate observes the following:

Substantial circumstantial evidence exists with regard to the offences hypothesized by the Public Prosecutor's Office charged to Francesco Schettino, as emerges from the records with particular reference to the first report of the Coastguard of Porto Santo Stefano of 14/1/2012, based on the summary testimonial information given by the members of the ship's crew, the chronology of events of the Harbour Office of the Port of Livorno, the AIS recording on record, and the PG Annotation of the Harbour Office of the Port of Livorno. The culpable behaviour Capt. Francesco Schettino is charged with results from all the records of investigation compiled in the immediacy of the tragic event, who, with a highly imprudent manoeuvre brought the cruise ship *Costa Concordia* too close to the coastline of the island Isola del Giglio, changing from the ordinary route to the so-called route for "tourist navigation" (see the unambiguous declarations made by Roberto Bosio, Alberto Fiorito, Silvia Coronika, Jacob Rusli Bin and Stefano Iannelli), caused the impact with a large coastal reef that sprung a leak in the bottom of the craft. The route deviation

and the approach to 0.28 nautical miles from the coast of the island was admitted even by the captain in the course of the guarantee interrogation, affirming becoming aware only visually that there was a jutting reef with which the ship's bottom impacted. The grave imprudence and incompetence that marked the conduct of the suspect at the time when he initiated the rash manoeuvre just mentioned is evident and indisputable. The impact with the reef caused the springing of a leak, with the water flooding the engine rooms and causing the electrical system of the engines to fail, leading to the blackout within the ship, which first veered on the port side, then began to ship water and list on the opposite side. In that predicament the captain, due to incompetence and negligence, underestimated the extent of the damage and failed to notify the coastal authorities of the accident in timely fashion, reporting that an electrical problem was involved (blackout), without mentioning immediately the impact that had caused the springing of the leak and the flow of water into five compartments of the ship's engine room and thus delaying the implementation of emergency procedures and rescue operations (see the day book of the operations room of the district maritime office of Porto Santo Stefano, the chronology of events of the Harbour Office of the Port of Livorno, the report of the operational division of the Revenue Guard Corps of Porto Santo Stefano, and the summary testimonial information given by Silvia Coronika and by Stefano Iannelli). It is a certified fact, notwithstanding the declarations to the contrary made at the time of interrogation, that the captain could not help being aware immediately of the seriousness of the damage produced both due to the ever increasingly more evident tilt of the ship and because advised by the crew of the huge amount of water shipped (see the summary testimonial information given by Giuseppe Piulon and Silvia Coronika and other members of the technical staff on board). In the aforesaid situation the captain lost control of the ship, which had its engines off and shifted position only by means of inertia and the rudders. The SOS was only sent 30-40 minutes after the impact (as reported by Schettino himself); in the meantime no external alarm signal was given to the coastal authorities to make the real seriousness of the situation aboard understood. At this point, as one also learns from the declarations of Capt. Schettino (which are corroborated by what was referred by the second-in-command as per table, Roberto Bosio), he ordered to drop the anchors and the ship, progressively increasing the tilt starboard, ran aground in the proximity of the coast of the island. The subsequent developments of the tragic wreck of the Costa Concordia are on record and

known through the official bulletins mentioned (again see the Informative Report of the Naval Operational Division of the Revenue Guard Corps of Porto Santo Stefano, the chronology of events of the Harbour Office of the Port of Livorno, the service report and day book of the operations room of the District Maritime Office of Porto Santo Stefano, and films shot by the rescue patrol boats).

At 10:58 PM the captain ordered the ship to be abandoned and informed the coastal authorities (see the informative report of the commander of the Naval Operational Division of Porto Santo Stefano) but, during the said operations, left the ship when there were still at least a hundred persons aboard ship (see the PG annotation of the harbour master of Livorno, Attachment 23), according to summary testimonial information given by Dimitros Christidis and Stefano Iannelli, as well as summary testimonial information operations they no longer saw the captain aboard ship, PG Annotation of CF Gregorio De Falco of 15/1/2012, Attachment 170).

The circumstance is admitted even by Capt. Schettino, who nevertheless, in his version of the facts at the validation hearing, stated that the abandonment was not wilful and that in light of the condition of the deck that he had reached, it was necessitated. However, it has been ascertained that other officers still aboard co-ordinated and directed the rescue operations while the captain had reached a reef aboard a lifeboat and refused to come back on board the ship, considering it an impossible feat (again see declarations made in the course of the validation hearing).

That having been premised as to the effective existence of serious circumstantial evidence of culpability with regard to the offences the suspect is charged with, the party passing judgement does not believe the second presupposition of law exists for the decree of detainment with regard to Francesco Schettino, namely the concrete danger of flight, for the following reasons.

From the testimony gathered in the immediacy of the facts through the summary information given by the persons who accompanied the captain it appears evident that, once having abandoned the ship, albeit in untimely fashion, he remained in place on the reef of Isola del Giglio where he had landed aboard a launch, and watched the ship sink at the mercy of the tragic event that was occurring (see the service report of Capt. Roberto Galli, Head of Area Security of the Municipality of Isola del Giglio, declarations made by Dimitros Christidis and by Stefano Iannelli and eyewitnesses, unambiguous on the point). Upon the arrival of the rescue patrol boat, the captain climbed aboard the same and was taken to the offices of the Carabinieri company of Orbetello, where the detention was ordered. There is no trace in the records and in the chronicles of the event (in the immediacy Capt. Schettino made statements to journalists in an interview aired on the national news) of any attempt to flee during or subsequent to the catastrophic event forming the object of investigation. Such attempt cannot be read into the albeit untimely abandonment of the Costa Concordia because it turns out that in any case the captain was accompanied in the debarkation by members of the crew, he remained on the reef to watch the disaster caused, was reached by members of the Fire Brigade and was in touch by phone with Commander De Falco, who ordered him to go back aboard the ship. In any case, Schettino did not engage in any behaviour aimed at leaving the coastal locality where the rescue of the shipwrecked was managed or in any case aimed at hindering his identification with the role filled. As was recalled by the defence in the course of the validation hearing, at the time of disembarkation the captain was without documents and nonetheless no attempt to hide or flee is evidenced. Even in light of constant jurisprudence on legitimacy (see penal sentences No. 15315 of 7/4/2010, No. 5244 of 10/1/2006 and No. 4089 of 18/12/2003) it is not thought that the presupposition of the concrete danger of flight has marked the behaviour of the suspect either in the course of the event of the shipwreck or subsequently, and that also in consideration of all the circumstances of time and of places in which the event occurred. On this point it must be remembered that the presupposition of the danger of flight is the only requirement that can justify the precautionary measure of the detention of the person suspected of committing a crime, the same measure not being able by law to be adopted to cope with the other precautionary requirements pursuant to Art. 274 of the Code of Criminal Procedure and signally of that pursuant to letter a) of the normative provision cited.

As for what pertains to the possibility, feared in the request for validation, that Capt. Schettino, because of his position and on the occasion of his activity of ship's captain, might have established human relations in outside localities that he could have utilized to flee and to escape from the investigations, it is evident that this circumstance is wholly hypothetical and in any case devoid of support even in terms of circumstantial evidence.

FOR THESE REASONS

Having read articles 384 and 390 of the Code of Criminal Procedure

The Magistrate in Charge of Preliminary Inquiries DOES NOT VALIDATE the decree of detention ordered with regard to Francesco Schettino on 14/1/2012.

As for the further request of the Public Prosecutor's Office of Grosseto to subject Francesco Schettino to the measure of custody in prison, the Magistrate observes:

Regarding the existence of serious circumstantial evidence of culpability pursuant to Art. 273 of the Code of Criminal Procedure, what is premised in the matter of this order must be viewed in light of the totality of the verified facts concerning the dynamic of the shipwreck forming the object of investigation, and as concerns the seriously culpable behaviour engaged in by the captain in the course of the entire event in question. The gravity of the culpable behaviour of the captain is indeed verifiable from the beginning, with the ordering and carrying out of the ill-considered manoeuvre of drawing too close to the island; in the phase of the impact, with the underestimating of the damage produced to the vital part of the Costa Concordia; and in the phase immediately subsequent to the impact produced, with the delay of the alarm signals and in any case of the tardy reporting to the coastal authorities of the actual situation in which the ship found itself. The emergency manoeuvre that the captain performed to bring the ship alongside the coast of the island (which manoeuvre was described by him in detail during the interrogation) is worthless for exempting him from responsibilities or in any case for attenuating the said responsibilities, since it is only natural that what was involved, at that point, was a due act to limit as much as possible the tragic consequences that the serious error committed and admitted unfortunately caused. But there is also serious circumstantial evidence of culpability for the other offences Francesco Schettino is charged with. On this point it is in fact necessary to repeat that the records show and that the suspect also has declared during the guarantee interrogation that Schettino left the ship when the operations of abandonment of the same by the passengers were still underway, assisted by members of the crew. The fact that other members of the crew and officers still aboard the ship were doing everything they could to make possible the disembarkation of the passengers objectively gainsays what the captain declared about the objective impossibility of directing and managing the emergency and rescue procedures. Even if what was asserted

about the objective need for the disembarkation were true (as stressed by the public prosecutor), no attempt was made by the captain to return at least in the proximity of the ship in the phases immediately subsequent to the abandonment of the *Costa Concordia* that had taken place.

Concerning the existence of the precautionary needs pursuant to Art. 274 of the Code of Criminal Procedure, it is necessary to point out that:

For the reasons explained above concerning the non-validation of the detention, the Magistrate deems inexistent a concrete danger of flight of the suspect, since according to law and constant jurisprudence the aforesaid presupposition cannot take shape as a mere investigative hypothesis unsupported by any element referable to his behaviour. It is repeated that Schettino, after having left the ship, did not commit any act from which it can be inferred that he had an intention to escape. The declarations he made at the Carabinieri Barracks of Orbetello about his intention to turn over a new leaf and to no longer want to go on ships clearly are due to dejection over the disaster caused and have no importance in the sense of an intention to take flight.

Therefore, the precautionary measure pursuant to letter b) of Art. 274 of the Code of Criminal Procedure is ruled out.

Coming to the danger of tampering with evidence, it must be pointed out that what was initially highlighted by the Public Prosecutor with regard to the presumed intention of the captain somehow to remove the ship's Voyage Data Recorder (VDR), it is belied on record by Document 170, PG annotation of Capt. De Falco, which specifies the possible misunderstanding of a piece of information given on that point. Capt. De Falco states that "following the contact that took place between the person in charge of the Company, Mr Paolo Mattesi present in the operations room and Capt. Schettino, it was decided to send another person, subsequently identified as Officer Martino Pellegrini, since the captain did not appear to be lucid."

As for the possibility that the captain might make use of his hierarchic position to influence the testimonial declarations of the officials and crew members concerning the facts that occurred, as the investigations stand, in which many of the subordinates of the captain have been heard who have made declarations that do not contradict one another, the aforesaid danger appears inexistent. The partially collaborative attitude assumed by the captain at the time of the validation hearing must also be pointed out, where, as already

said, he admitted the error committed with the ill-considered manoeuvre of drawing near the island. One does not see, based on the results of the investigations, what convenient version the captain might concoct for the purpose of absolving himself of responsibility.

The objective gravity of the event is unquestionable – a world-scale disaster – as well as the seriously culpable behaviour charged to the captain of the *Costa Concordia*. These facts, of a nature in any case objective, are in addition to an overall negative evaluation of the personality of the individual. In the magistrate's opinion, this is not specifically in terms of the precautionary needs propounded by the Public Prosecutor, but rather in terms of the danger of recidivism involving offences with a culpable background perpetrated to the detriment of third parties assigned to the care and responsibility of the individual being investigated, owing to the role involved and the activity performed. Indeed, even as recalled above, Schettino admitted his imprudence under questioning and tried to mitigate the enormity of his error with the subsequent manoeuvre, effected to prevent the moving away of the ship from the coast of Isola del Giglio. Recalling that manoeuvre in detail, Schettino affirms being a "good captain."

That appears to indicate an incredible thoughtlessness in assessing the actual scope of the behaviour engaged in to the detriment of over 4,000 persons entrusted to his responsibility. It is indeed evident that with the said manoeuvre the captain caused the shipwreck of the passengers and the death of verified victims. On this point, concerning the error committed, Schettino admits the circumstance but then goes on to describe the phase of the emergency manoeuvre which, at that point, as stated, at least formed part of his duties. But to this thoughtlessness also must be added the total incapacity to manage the subsequent phases of the emergency created, thus delaying the rescue operations from land. Finally, the negative evaluation of the individual's personality includes the fact of having abandoned the ship ahead of all the passengers on board and of having remained over an hour on the reef where he had disembarked in a situation of complete inactivity. In the final analysis the serious incompetence, imprudence and negligence that mark the behaviour of the captain make real and present the danger of repetition of offences of the same sort as those for which we proceed, i.e. of seriously culpable offences committed to the detriment of third parties entrusted, owing to the activity engaged in, to the responsibility of the suspect. This conviction of the magistrate cannot be invalidated by the uniqueness in terms of dimensions of the event caused. And in fact what was declared

by Schettino himself during his stay at the Carabinieri Barracks of Orbetello about his intention to turn over a new leaf and no longer board ships, concretely opens the scenario of the existence of the possibility of repetition of the type of offences the suspect is charged with. Schettino engages in the professional activity of captain of ships and he is not forbidden in the immediate future to continue in his activity. In any case specific danger of repetition of culpable offences takes shape concretely for any kind of activity that entails the entrustment of third parties to the care and to the responsibility of the suspect. The magistrate therefore believes that precautionary requirement pursuant to letter c) of Art. 274 of the Code of Criminal Procedure applies with reference to the offences Francesco Schettino is charged with.

Coming to the criteria for the choice of precautionary measure pursuant to Art. 275 of the Code of Criminal Procedure, it must be pointed out that the nature of custody in prison is configured by the law as an extreme remedy to be applied only when every other measure provided for is to be considered unsuitable for meeting the precautionary needs that present themselves in the case in point. It is thought that, including in consideration of the circumstances stated in the defensive instance, the aforesaid and recalled precautionary needs can adequately be satisfied with a measure less harsh than that requested by the Public Prosecutor and signally with the measure of house arrest.

If one actually considers the social inclusion of the suspect, the fact that he has a stable family with which he cohabits, the absence of the danger of flight, the circumstance recalled by the defence under the profile of the professional training received and confirmed by the behaviour engaged in with the workers at the time of the detention, he is in any case accustomed in ordinary life to the observance of hierarchies and rules, which is why it is unreasonable to think that he may elude the controls provided for. The measure of house arrest, with prohibition to communicate with persons other than those with whom he cohabits, therefore appears fully suitable for satisfying the precautionary needs in connection with recidivism involving engaging in seriously culpable criminal behaviour by the suspect.

FOR THESE REASONS

Having read articles 273, 274 and 284 of the Code of Criminal Procedure.,

She applies to Francesco Schettino, under investigation for the offences pursuant to articles 113, 449(2), in reference to Art. 428, 589(3), 81(1) and 591 of the Penal Code, the measure of house arrest to be executed at his residence located in Meta di Sorrento (NA) at Via Vito San Cristoforo 10, with absolute prohibition against going away or communicating by any means with persons other than his cohabitants.

She orders the immediate release from prison of Francesco Schettino unless detained for another reason.

She authorizes Francesco Schettino to reach unescorted, with his own means, taking the shortest route and in the shortest time possible, the place of the house arrest.

She orders that upon arrival at the place of house arrest the suspect shall promptly notify the police forces competent for the controls, to be identified as the Carabinieri, Station of Piano di Sorrento (NA).

She tasks the Office of the Court's Clerk with the matter of discharging obligations and communications.

Grosseto, 17 January 2012

THE MAGISTRATE IN CHARGE OF PRELININARY INQUIRIES Dr Valeria Montesarchio

COURT OF GROSSETO Office of the Magistrate for Preliminary Inquiries Filed with the Office of the Court's Clerk TODAY 17 Jan. 2012 7:35 PM The Court's Clerk (Dr Sandra ZANELLI)