

G.R. No. L-2395

**[ G.R. No. L-2395. August 06, 1948 ]**

**IN THE MATTER OF THE PETITION OF MARIANO CONCEPCION, JR.,  
PETITIONER, VS. THE CHIEF OF POLICE MANILA, RESPONDENT.**

**D E C I S I O N**

**PERFECTO, J.:**

Petitioner is detained by respondent by virtue of an Order issued on August 29, 1947, by the Justice of the Peace of Masbate, directing the confiscation of the bond put up by petitioner for his provisional liberty in Criminal Case No. 293 for illegal possession of fire arm and his arrest, the reason being petitioner's non-appearance at the preliminary investigation set on the date of the Order despite the fact that his bondsmen were duly notified.

According to the undisputed testimony of petitioner, his failure to appear at the preliminary investigation was due to the fact that he did not receive any notification either from the Court or from his bondsmen about said preliminary investigation and he had no knowledge that it was set for August 29, 1947.

From this evidence it appears that petitioner's non-appearance was involuntary, due to his lack of knowledge of the preliminary investigation to be held. Even if he was duly notified of the preliminary investigation, his failure to appear, at most, can be considered as a waiver to be present at said preliminary investigation, as is his right according to the Rules. The Justice of the Peace, instead of ordering the confiscation of petitioner's bond and his arrest, could have proceeded with the preliminary investigation in the absence of petitioner. His order of August 29, 1947, is therefore null and void and there being no other basis for continuing the detention of petitioner, the latter is entitled to be immediately released.

The Order of the Justice of the Peace of Masbate dated August 29, 1947, is set aside. Petitioner's bond should be considered to remain in effect; respondent is ordered to immediately release petitioner.

Considering the urgency of this case, it affecting personal freedom, this decision shall be immediately executor.

SO ORDERED.

Manila, August 6th, 1948.

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