

IN THE MATTER OF THE PETITION FOR THE HABEAS CORPUS OF LT. RUBEN ROY, NATIVIDAD BANAAG ROY, PETITIONER, VS. GIL S. FERNANDEZ, COMMANDANT, PHILIPPINE COAST GUARD, CMDR. GEORGE TE...

G.R. No. L-35276. September 28, 1972

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition for review filed by petitioner Natividad Banaag Roy of the decision of the trial court dated May 31, 1972 denying her petition for habeas corpus – for the release of her husband Lt. Ruben Roy of the Philippine Coast Guard from confinement.

As recounted by the trial court:

"* * * petitioner alleges that at about 2:00 o'clock in the afternoon of April 17, 1972, her husband, Lt. Ruben Roy of the Philippine Coast Guard (PN), who was then at the office of HQ Service Support Command, Philippine Coast Guard, Sangley, Cavite City, was arrested, taken to Manila and detained at the Law Enforcement Command, Parola Compound located at Muelle de Industria, Manila, where he is still in confinement at the time of the filing of the petition, without any formal complaint for any specific offense having been filed against him; that Lt. Ruben Roy did not commit any offense for which he should be arrested or deprived of liberty without judicial warrant; that the unlawful arrest and detention was effected by Commander George Templo under order of Captain Gil Fernandez, both of the Philippine Coast Guard.

"On the other hand, the respondents, in their answer, while admitting the arrest on April 17, 1972 of Lt. Roy and his continued detention and confinement by respondent Templo, by virtue of an order issued by respondent Fernandez, they justified the legality of their actuation by alleging that Lt. Roy was arrested and detained for the purpose of holding him answerable to the protracted investigation regarding the pilferage of ammunition and firearms at Sangley, Cavite City; that his continued detention is a security measure by and pursuant to military law and accepted procedures; that such confinement is an accepted method of physical restraint in the military establishment despite the absence of a declaration of martial law; that instant petition is not the proper remedy available to the petitioner because administrative remedies have not been exhausted; and that petitioner's husband, being a military personnel, is not entitled to the remedy of habeas corpus." (pp. 59-60, rec. of Sp. Proc. 86881, CFI, Manila).

The parties agreed to submit the case for decision on the basis of the respective pleadings and memoranda (p. 60, rec.).

On June 5, 1972, petitioner appealed (p. 4, rec.; p. 118, rec. of Sp. Proc. 86881, CFI Manila) from the adverse decision and, pursuant to Our resolution dated June 22, 1972 (p. 3, rec.), filed on July 12, 1972 the instant petition for review (pp. 9-36, rec.), which was given due course (pp. 38-39, rec.) and as a consequence respondents were required to file their answer ten (10) days from notice (pp. 40-43, rec.). On August 11, 1972, the Solicitor General, in behalf of the respondents, filed a motion praying for an extension of 15 days from August 12, 1972

within which to file an answer (p. 44, rec.), which was granted (p. 46, rec.).

Instead of filing an answer, the Solicitor General filed on August 25, 1972 a motion to dismiss on the ground that this petition has already become moot and academic by reason of the fact that the corresponding charge for the violation of Article 97 of the Articles of War was already filed against Lt. Ruben Roy and is pending pre-trial investigation before a pre-trial investigator; that the petitioner has not exhausted administrative remedies by failing to appeal to the highest naval officer of the Philippine Navy, from the order of confinement issued by respondent Commodore Gil S. Fernandez; and that Lt. Ruben Roy, pursuant to his letter-request dated July 7, 1972 to respondent Com. Gil S. Fernandez, then commandant of the Philippine Coast Guard, was restored to full duty status and re-assigned to the law enforcement command, and therefore has been released from confinement (pp. 47-50, rec.).

Counsel for petitioner opposes the motion to dismiss (pp. 56-59, rec.).

It appearing that Lt. Ruben Roy, petitioner's husband, is no longer restrained of his liberty and, upon his own request (p. 51, rec.), has been restored to full duty status, since July 20, 1972 (p. 52, rec.), this petition has become moot and academic.[1] WE likewise ruled in *Matsura, et. al. vs. Director of Prisons*[2] that the moment an accused is granted bail, the writ of habeas corpus will not be granted even if his detention prior to the filing of criminal charges against him was without any legal authority. And as early as the 1916 case of *Tan Me Nio vs. Insular Collector of Customs*,[3] a person who has been released on bail, is no longer deprived of his liberty and therefore is not entitled to the writ of habeas corpus. In the case at bar, as aforesaid, Lt. Roy has been completely released from confinement and not merely granted provisional liberty on bail.

This however does not foreclose any right accorded by the laws to Lt. Ruben Roy to seek redress for the alleged illegal deprivation of his liberty from April 17 to July 20, 1972.

WHEREFORE, the petition is hereby dismissed as moot and academic, without prejudice to the right of Lt. Ruben Roy to file the appropriate action or to seek the corresponding remedy for his alleged unlawful confinement. Without costs.

Concepcion, C.J., Zaldivar, Castro, Fernando, Teehankee, Barredo, Antonio, and Esguerra, JJ., concur.

Makalintal, J., took no part.

[1] Sec. 1, Rule 102, Revised Rules of Court; *Real vs. Truthman*, L-23074, May 24, 1967, 20 SCRA 180-181; Vol. 3, Moran, *Comments on the Rules of Court*, 1970 Ed., pp. 596-597; Vol. 3 Martin, *Rules of Court*, 1969 Ed., pp. 670, 674-676.

[2] L-1181, Feb. 28, 1947, 77 Phil. 1050, 1051.

[3] 34 Phil. 944-947.

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