

RAFAELA G. VDA. DE CASTRO, PETITIONER, VS. MAJOR GENERAL FABIAN VER, AS COMMANDING OFFICER OF THE NATIONAL INTELLIGENCE SECURITY AGENCY (NISA); JUAN PONCE ENRILE, AS SECRETARY O...

G.R. No. L-42399. January 30, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

On January 15, 1976, Rafaela G. Vda. de Castro, on behalf of her son, Rolando G. Castro, 42 years of age, single and government employee, presented the present petition for the issuance of a writ of habeas corpus for the release of her son from custody of respondents, asserting that her son was arrested on January 13, 1976 at their residence, without "any warrant of arrest, search and seizure order", by Lt. Batac, and thereafter brought to the Camp Crame stockade where he is now detained and kept incommunicado, which "detention is illegal and without any justification and/or legal authority". Acting on said petition, this Court, on January 16, 1976, issued the Writ, commanding the respondents, or their authorized representatives, (a) to appear and produce the body of Rolando G. Castro before this Court, and (b) to show the cause of imprisonment or restraint, both acts to be done on Wednesday, January 21, 1976 at 10:30 a.m., at which date and time the parties will be heard. Upon urgent motion of the Solicitor General on behalf of respondents, the filing of the return and the hearing was postponed to January 23, 1976.

On the date of hearing, the respondents produced the person of Rolando G. Castro, subject of the writ, and informed this Court, in the return, that said detainee was arrested by elements of the 5th Constabulary Security Unit and is being detained in Camp Crame, Quezon City, by virtue of Arrest, Search and Seizure Order No. 3140, dated January 10, 1976, issued by the Secretary of National Defense, "for knowingly, wilfully and by overt act joining the Communist Party of the Philippines in violation of the Anti-Subversion Act (Rep. Act No. 1700)", and in connection with his arrest, "a .32 cal. Mauser pistol and 77 rounds of ammunition were seized from him after he failed to produce a license to possess the same". It was also asserted that in accordance with the rules and regulations of the Chief, Philippine Constabulary, Capt. Virgilio G. Saldajeno, Legal Officer of the 5th Constabulary Security Unit, called up the detainee's residence within seventy-two (72) hours of the arrest and informed the latter's relatives of his whereabouts and of the fact that they can visit him in Camp Crame, Quezon City. Attached to the return was an affidavit of Rolando G. Castro, in which he states, among other things, that he is not being held incommunicado, and he does not agree with the filing of the present petition, as he, as a lawyer and aware of his rights, would rather clear his name in the investigation being conducted by the P.C.

This petition, as well as several others acted upon by this Court, sufficiently indicate the availability of the writ of habeas corpus during martial rule. Thus, it must be recognized that while instances of unjustified and unwarranted detention may occur, it has so far been shown that either the top officials of the defense establishment or the courts of justice can step in to right matters. It is only with respect to persons arrested or detained for acts related to the basic objective of the proclamation of martial rule who are precluded from utilizing this remedy to put an

end to their deprivation of freedom.

Considering, however, that the person detained has voluntarily moved for the withdrawal of this petition, and since it is his personal liberty that is at stake, the Court has voted to allow such withdrawal.

Wherefore, the petition for habeas corpus is considered withdrawn and the case terminated.

Fernando (Chairman), Barredo, Aquino, and Concepcion Jr., JJ., concur.

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