

**JOSE P. BENGZON, ACTING COMMISSIONER OF IMMIGRATION,
PETITIONER, VS. BUENAVENTURA OCAMPO, JUDGE OF THE COURT
OF FIRST INSTANCE OF MANILA, AND MARIANO CHAN (ALIAS ONG
LIAN CHO), ...**

G.R. No. L-3078. September 27, 1949

Ponente: FERIA, J.

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FERIA, J.:

The deportation of the respondent Mariano Chan alias Ong Lian Cho was, after the required investigation, ordered by the Bureau of Immigration for having maintained a house of prostitution. Pending the execution of the order of deportation, said respondent filed a petition for a writ of habeas corpus with the Court of First Instance of Manila presided over by the other respondent Hon. Judge Ocampo; and during the pendency of the habeas corpus proceeding the respondent Judge Ocampo, upon motion of the other respondent above mentioned, ordered the provisional release of the latter under the condition that he should file a bond of P10,000 and report to the Bureau of Immigration on Monday, Wednesday and Saturday of every week.

The question involved in the present case is whether or not the respondent Judge acted in excess of the court's jurisdiction in granting the petition of the respondent Mariano Chan for his temporary release on bail during the pendency of the habeas corpus proceeding instituted by him against the Commissioner of Immigration on the ground that the Bureau of Immigration has no power or jurisdiction to detain and order the deportation of the said respondent.

The only legal provision which has some bearing on the question is section 12, Rule 102, of the Rules of Court which provides the following:

"Hearing on return. Adjournments.—When the writ is returned before one judge, at a time when the court is in session, he may forthwith adjourn the case into the court, there to be heard and determined. The court or judge before whom the writ is returned or adjourned must immediately proceed to hear and examine the return, and such other matters as are properly submitted for consideration, unless for good cause shown the hearing is adjourned, in which event the court or judge shall make such order for the safekeeping of the person imprisoned or restrained as the nature of the case requires. * * *".

According to the above quoted provisions the judge in a habeas corpus proceeding must immediately proceed to hear and decide the case, unless for good cause shown the hearing is adjourned, in which event the court or judge shall make such order for the safekeeping of the person imprisoned or restrained as the nature of the case requires. It is obvious that the phrase "for the safekeeping of the person imprisoned or restrained" can not be construed to mean temporary release on bail, because a person arrested or detained can not be released on bail unless that right is granted expressly by law, as the right of defendants in criminal cases to be released on bail under certain condition, as well as the right of a person, whose release has been ordered by judgment in a habeas corpus proceeding to be temporarily released on bail if appeal is taken by the officer or person detaining, granted by

section 20 of Rule 41, Rules of Court. On the contrary, the word "safekeeping" according to the dictionaries means "the act or state of keeping or being kept in safety." A person arrested is not safely kept if released on bail.

It is not necessary for us to determine, (a) whether the Commissioner of Immigration has authority to release an alien under bail or other conditions after the Board of Immigration has ordered his deportation as in the present case, although it seems that there is no provision of law expressly authorizing such release; and, (b) whether an alien under arrest in a deportation proceeding has the right to be released under reasonable bond or condition before the Bureau of Immigration has rendered its decision ordering his deportation, and therefore the courts of justice may, in a habeas corpus proceeding, grant his temporary release on bail if the Commissioner of Immigration refuses to grant or requires unreasonable bond or conditions for his release; because these are not now the questions submitted to us for decision.

In view of the foregoing, we hold that the respondent judge acted in excess of the jurisdiction of the court in releasing the defendant on bail during the pendency of the habeas corpus proceeding, and therefore the order complained of is set aside with costs against the respondent Mariano Chan. So ordered.

Moran, C.J., Ozaeta, Paras, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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