

COMMISSIONER OF IMMIGRATION, PETITIONER, VS. HON. GAUDENCIO CLORIBEL, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH VI, MERCEDES TOBIANO CO., JOSE TOBIANO AND JUSTO ...

G.R. No. L-24139. October 14, 1968

Ponente: FERNANDO, J.

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FERNANDO, J.:

On the authority of our previous decisions, *Bengzon v. Ocampo*,^[1] *Tiu Chun Hai v. Deportation Board*,^[2] and *Ong Hee Sang v. Com-missioner of Immigration*,^[3] the Commissioner of Immigration filed this petition for certiorari with preliminary injunction on February 8, 1965, against respondent Judge, the Honorable Gaudencio Cloribel of the Court of First Instance of Manila, for the release on bail of respondents Jose Tobiano and Justo Tobiano during the pendency of their habeas corpus proceeding, the allegation being that such an order of respondent Judge was in excess of jurisdiction or with grave abuse of discretion, the above decisions speaking to the effect that the power to release on bail in exclusion or deportation cases is vested not in a court of first instance but in the Bureau of Immigration.

This Court, in a resolution of February 10, 1965, gave due course to the petition, giving respondents 10 days within which to answer the same. A writ of preliminary injunction was likewise issued.

In the answer filed by respondents on February 18, 1965, the dismissal of the petition was sought on the ground of it being premature, no motion for reconsideration having been filed with the respondent Judge. It was further alleged that certiorari does not lie as petitioner had the remedy of appeal, the jurisdiction of respondent Judge over the parties and the subject matter not being disputed.

Thereafter, on March 30, 1965, an urgent petition was filed by respondents, other than the respondent judge, stating that Jose Tobiano and Justo Tobiano had, as of that time, been under detention in Engineering Island, Bureau of Immigration, for about six months, contending that a detainee, in a case under consideration by the Court of Appeals, the facts being not dissimilar, was allowed bail by such court. In the reply to such urgent petition filed by the Commissioner of Immigration, on April 2, 1965, while his stand was reiterated, his counsel, the Solicitor General, like-wise informed the court that he would leave "the matter of granting bail to respondents entirely to [our] sound discretion." Our resolution of April 5, 1965, deferred action on such urgent petition "until this case is taken up on the merits."

Then came on April 8, 1965, a manifestation and a motion for reconsideration filed by respondent, stressing that the Solicitor General was not opposed to the granting of petition for bail, suggesting only certain conditions to accompany such a grant, from which fact the assertion was made that there appeared to be "no real contentious issue concerning the granting of bond for the provisional release" of the two above-named respondents. There was an oppo-sition to such a motion for reconsideration filed by petitioner on April 10, 1965.

On May 4, 1965, there was a reiteration of the above petition for us to grant the two above-named respondents liberty under bail. Barely two weeks later, on May 17, 1965, such a plea was again raised by respondents in another petition, this time invoking not only what they considered would be the primacy that should be accorded liberty and an appeal to mercy but likewise the insanitary and unhealthy conditions in Engineering Island, which at that time had one hundred five detainees of whom one is a leper, twelve are tuberculars, another an invalid with sores all over his body, with the sick and healthy detainees being crammed together in a dilapidated building "where conditions are humanly intolerable." The newspaper article cited in support of such motion made mention of the diet of such detainees "of sub-nutrition level" with rooms insufficient to accommodate all of them, resulting in their having to "sleep on the dirty bare floors along the corridors." The newspaperman likewise noted their "pale and haggard" look as well as the "hollowed cheeks" and "sunken eyes."

Not content with the above motion, respondents Jose and Justo Tobiano, on June 17, and July 2, 1965, again sought for reasons already stated the release on bail. On July 9, 1965, a manifestation was filed by the then Solicitor General to the effect that he would "leave it to [our] sound discretion * * * to grant the bail in the interest of justice for the provisional release of said respondents, considering that there has been an apparent delay in the determination of the rather complicated issues of law involved," with the result that "it might take much more time before the case can be finally decided."

Encouraged by such a manifestation, the above-named re-spondents, on August 13, 1965, filed an urgent motion reiterating the urgent petition to bail making reference anew to Commissioner of Immigration v. Fernandez.[4] There was subsequent plea, a manifestation filed on August 20, 1965, where the accusation was launched against petitioner to the effect that he "was apparently actuated by an unexplained intent to be unduly harsh to the two [respondents, Jose and Justo Tobiano]." There was naturally a denial of such accusation in a reply to the manifestation filed by the Solicitor General on August 26, 1965, and a reiteration of his stand that, based on the above cases, respondent Judge could not have allowed bail to the other respondents during the pendency of the habeas corpus proceeding. Nonetheless, the Solicitor General, following the other manifestation, left it to our sound discretion to allow the bail or not subject to other conditions as may be imposed by us.

Then came our resolution of August 30, 1965: "In G.R. No. L-24139 (Commissioner of Immigration v. Hon. Gaudencio Cloribel, etc., et al.): In view of our resolution in G.R. No. L-22696 (Commissioner vs. Fernandez) which case is similar to this; our injunction order of Feb. 10, 1965 is hereby amended in the sense of permitting respondent judge to grant bail to Jose Tobiano and Justo Tobiano (P25,000 each) subject to conditions similar to those granted by the Court of Appeals in the suit referred to in L-22696. Such release on bail shall be subject to the decision to be promulgated in this litigation.'"

By virtue of the above resolution, the matter of release on bail has become moot and academic. It is true that the legal question raised is of significance and may result in the re-examination of the previous doctrine announced. Nonetheless, in the light of the above resolution, it would be well to wait for a more propitious occasion where the parties in an antagonistic proceeding would have the opportunity of raising what undoubtedly is a question of the utmost importance.

WHEREFORE, this petition for certiorari with preliminary injunction is dismissed, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Angeles, and Capistrano, JJ., concur.
Zaldivar, J., on official leave.

[1] 84 Phil. 611 (1949).

[2] L-10109, May 18, 1956.

[3] L-9700, February 28, 1962.

[4] L-22696, May 29, 1964.

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