

ANDRE KINTANAR, ROGELIO M. MORALES, JR., HECTOR (SONNY BOY) KINTANAR, AND PABLITO KINTANAR, PETITIONERS, VS. BRIG. GENERAL LUIS AMOR, COMMANDER, III P.C. ZONE, AND III RECAD, CA...*G.R. No. L-42975. March 15, 1976*

Ponente: ANTONIO, J.

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This is a petition for the issuance of the writ of habeas corpus for the release of Andre Kintanar, Rogelio M. Morales, Jr., Hector (Sonny Boy) Kintanar, and Pablito Kintanar from the custody of respondents, alleging that said petitioners were arrested on the night of February 11, 1976 and detained at Camp Sergio Osmeña, Sr., Cebu City, in connection with the death of one Jose Miguel Anson on February 10, 1976; that on February 13, 1976, they requested respondent Lt. Col. Romeo Zulueta to hasten the investigation regarding their suspected participation in the aforesaid crime and to release them from detention if there is no probable cause; otherwise, they should be formally charged before the civil court so that they could post the necessary bail for their temporary release; that on February 20, 1976, they made a similar request with respondent Brigadier General Luis Amor, but this notwithstanding, they received no reply from either respondent; that their continued detention has prejudiced them as two of the petitioners, Andre Kintanar and Rogelio M. Morales, Jr., are graduating from school, while the other two are presently employed, and as a consequence of their continued detention, the first two may not be able to graduate this school year while the other two may lose their jobs.

On the basis of the verified petition, this Court issued the writ commanding the respondents to appear and produce the bodies of the petitioners and to make a return on March 8, 1976.

In the return, respondents asserted that petitioners were arrested and detained in connection with their involvement, on the basis of eyewitnesses' accounts, in the murder of Jose Miguel Anson in the evening of February 10, 1976 in Cebu City, which arrest and detention is confirmed by Arrest and Seizure Order No. 3129, dated February 14, 1976, issued by the Secretary of National Defense; that immediately after their arrest, an investigation into the circumstances of the killing was conducted, but due to unavoidable delays caused by the nature of the evidence, it was only on March 1, 1976 that the investigation was completed and the papers thereof forwarded to the Director of Prosecution Group, Third RECAD, where the evidence against petitioners is now being assessed to ascertain whether or not they should be charged before the civil court or a military tribunal for the killing of the deceased; that in the meantime, the petitioners have been released and are no longer in the custody of the respondents. Respondents consequently prayed that in view of petitioners' release and the fact that they are no longer restrained of their liberty, this case be now considered as moot and academic.

At the hearing of this petition on March 8, 1976, petitioners admitted that they had been actually released; however, their release was subject to certain conditions, one of which is that they should be under the supervision of the Commanding Officer of the CIS or his duly authorized representative, to whom they shall report upon

release or "as often as directed", which, in the view of petitioners, is not a complete restoration of their liberty. It was explained, however, that the afore-mentioned conditions were but precautionary steps taken to ensure their availability to the authorities, considering that the evidence against them in connection with the crime with which they are involved are still being evaluated.

In *Aquino, Jr. v. Enrile*,^[1] this Court, through Chief Justice Makalintal, declared that "implicit in a state of martial law, is the suspension of the said privilege (of habeas corpus,) with respect to persons arrested or detained for acts related to the basic objective of the proclamation, which is to suppress invasion, insurrection, or rebellion, or to safeguard public safety against imminent danger thereof. The preservation of society and national survival take precedence. On this particular point, that is, that the proclamation of martial law automatically suspends the privilege of the writ as to the persons referred to, the Court is practically unanimous." The question of whether or not petitioners have been arrested and detained for acts related to the basic objective of the proclamation of martial rule has been rendered moot by their release.

We have consistently held that where petitioner has been released from confinement, the petition for habeas corpus shall be dismissed for being academic.^[2]

WHEREFORE, the petition is hereby dismissed, without any pronouncement as to costs.

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

Fernando, J., (Chairman), is on official leave.

Martin, J., was designated to sit in the Second Division.

[1] 59 SCRA 184, 292.

[2] *Pestaño v. CFI*, 81 Phil. 753; *Roy v. Fernandez*, 47 SCRA 149; *Rafaela Vda. de Castro v. Major General Fabian Ver, et al.*, G.R. No. L-42399, January 30, 1976.

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