

## ONG HEE SANG, ETC., ET AL., PETITIONERS AND APPELLEES, VS. THE HON. COMMISSIONER OF IMMIGRATION AND RICARDO PORTUGAL, RESPONDENTS AND APPELLANTS.

*G.R. No. L-9700. February 28, 1962*

Ponente: BARRERA, J.

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### BARRERA, J.:

Respondents Commissioner of Immigration and Ricardo Portugal (Immigration Detention Officer) appeal[1] from the decision of the Court of First Instance of Manila (in Spec. Proc. No. 22953), insofar as it orders the release (pending their deportation) of petitioners Ong See Sang, Go Siok Chuio, Go Kipt See (represented by Go Seng Kue), Qua Siok Ting, Lim Eng King, Lim Eng Sing, Lim Eng Suan (represented by Lim Giok Tim), Li Kua Hua, Tan Chee Pick (represented by Yu Hua), Ong Siok Ting, and Wang Pong (represented by Ong Si), upon their filing of a bond, conditioned upon their presentation to the Bureau of Immigration, when the latter is in a position to effectuate their deportation, and subject to such other conditions as may be imposed by respondent Commissioner of Immigration.

The facts of the case are succinctly stated in the decision of the trial court, to wit:

"Petitioners who are Chinese nationals are natives of Amoy, China. They left Amoy to live in Hongkong but with intentions to return to their native place. Their desire to return to Amoy was, however, frustrated when the Chinese communists took over the Chinese mainland.

"While in Hongkong, they made a trip to Japan and on their return to Hongkong, they passed through the port of Manila where they arrived on November 3, 1952 on board the S.S. Cleveland. They were allowed by the Philippine Immigration authorities to disembark from the S.S. Cleveland for the purpose of taking another means of transportation to Hongkong, for which they were given up to November 28, 1952. Despite the period of time given them within which to leave the Philippines, and notwithstanding the availability of surface and air transportation to Hongkong, petitioners failed to comply with the condition imposed for their temporary stay in the Philippines. On November 29, 1952, warrants for their arrest were accordingly issued by the Immigration authorities, but the warrants were, subsequently, lifted upon representations made that petitioners would leave for Formosa, through the Chinese Embassy in the Philippines, but up to this date no action had been taken on the said application by the Chinese Nationalist government in Taipei.

"The records disclose that on August 20, 1953, petitioner Ong Hee Sang gave birth to a child, Bernard Go (Exh. B); that on September 1, 1953, petitioner Qua Siok Ting gave birth to a girl, Lily Lim (Exh. A); that on Sept. 20, 1953, petitioner Lee Kim Hue gave birth to a boy, Johnny Yu (Exh. D); and that on January 29, 1954, petitioner Ong Siok Tan gave birth to a girl, Linda Ngo (Exh. C). These four children who have been separated from their respective mothers are now under the care of friends of petitioners.

"Not having heard anything from the Taipei government as to the result of their visa application, and as their reentry visas to Hongkong had expired on April 21, 1953, herein petitioners on April 6, 1954 applied for reentry visas to Hongkong through the British Legation in Manila (Exhs. E, F, G, H, and I). Notwithstanding

the telegraphic advice from a friend in Hongkong that their reentry visas would soon be granted (Exh. I), petitioners and respondents are agreed that the issuance of reentry visas to Hongkong depends solely on the will and pleasure of the authorities there. Ang Go San Kue testified that he could not be sure when the said visas were forthcoming, if they were to be granted at all by the Immigration authorities of the Crown Colony.

"Petitioners having failed to leave the Philippines pursuant to the condition under which they were allowed to disembark from the S.S. Cleveland, the Immigration authorities, on April 20, 1953, issued warrants for their arrests. After due investigation, during which they were allowed to bail, the Board of Commissioners of Immigration found that petitioners had violated the condition of their temporary stay, thus rendering themselves subject to deportation under Section 37 (a) (7) of the Philippine Immigration Act of 1940 and, accordingly, the Board rendered a decision ordering their deportation. Pursuant to the said decision, the First Deputy Commissioner of Immigration issued warrants of deportation against petitioners who are presently confined in the Detention Station of the Bureau of Immigration, Engineer Island, Manila, under the custody of the said detention station. Petitioners Tan Chi Pick and Lee Kim Hua have been under detention since April 21, 1954, and the rest of the petitioners since April 12, 1954.

"On May 11, 1954, Lim Giok Tim, Go Seng Kue, Yu Hue, and Ong Si, filed, on behalf of the petitioners, a request with the Bureau of Immigration that petitioners be released under bail pending their deportation (Exh. K). Said petition was, however, denied by the First Deputy Commissioner on May 29, 1954 (Exhs. K-1 and K-2)."

In its decision (dated June 11, 1954), the trial court denied petitioners' petition for habeas corpus, but allowed their provisional release on bail pending their actual deportation, stating:

"The right to bail is guaranteed by the Constitution. It is one of the most fundamental and sacred rights. Even in capital offenses, the accused may be released on bail, unless the evidence of guilt is strong, the burden of proof being on the government. By analogy, therefore, once a petition for bail is filed by an alien subject to deportation, it is incumbent upon the authorities to show the existence of potent reasons why the alien should not be released on bail pending his actual deportation. In the instant case, respondents have not made any showing why petitioners should not be released on bail pending their deportation. There is no derogatory information against the petitioners. Four of them are wives of permanent residents and businessmen in the Philippines, and have nursing babies who are now only under the care of friends. According to Article 363 of the Civil Code of the Philippines, a child below seven years of age shall not be separated from the mother unless there be compelling reasons therefor. Not only infant children are being deprived of their care, but their husbands are deprived of their company at least before their actual deportation. The Court feels that, if they are to be deported, they should at least be allowed to take care of their children and keep their husbands company pending their deportation.

"Even in cases involving capital offenses, for the purpose of a bail petition, the probability of flight is one important factor to be taken into consideration. The sole purpose of confining an accused before conviction is to assure his presence at the trial. If a denial of bail in capital offenses, is authorized, it is only on the theory that the proof of guilt being strong, the defendant would flee, if he has the opportunity, rather than face trial. Hence, exception to the fundamental right to bail should be applied in direct ratio to the probability of evasion of prosecution. (Montano vs. Ocampo, G. R. No. L-6352, January 29, 1953.) By analogy, the only justification for the detention of an alien who is ordered deported, is to assure that he will be available at the time of deportation. If bail in a deportation proceeding is to be denied, it must be, therefore, based on the theory that if given the opportunity, the alien may abscond himself and thus avoid deportation. But no such danger exists in the instant case. Petitioners are women and children of tender age. The four adult female petitioners are married to permanent residents of the Philippines. They have nursing babies to take care of. Aside from their husbands, petitioners have no connections in the Philippines which could facilitate their evasion of deportation. They are not unwilling to be deported. In fact they have expressed their desire to go to Formosa or to return to Hongkong, as shown by the fact that they have applied for visas from the Taipeh government and for reentry to

Hongkong. "Considering the above circumstances, the court feels that respondents have committed a grave abuse of discretion in denying petitioners to bail pending their deportation."

Respondents-appellants claim that the trial court erred in granting bail to petitioners-appellees who were at the time under detention by the immigration authorities pending their deportation pursuant to orders of deportation issued against them.

We find the claim meritorious. Aliens in deportation proceedings, as a rule, have no inherent right to bail (*Prentis vs. Manoogian*, 16 F. 2d. 422; *U. S. ex. rel. Papis vs. Tomlinson*, 45 F. Supp. 447; *U. S. ex rel. Iannnis vs. Garfinkle*, 44 F. Suppl. 518); and it has been held that a person arrested or detained cannot be released on bail, unless that right is granted expressly by law (*Bengzon vs. Ocampo, et al.*, 84 Phil. 611). Section 37(9) (e) of the Philippine Immigration Act of 1940 (Com. Act No. 613, as amended), provides that

"Any alien under arrest in a deportation proceeding may be released under bond or under such other conditions as may be imposed by the Commissioner of Immigration."

Note that this provision confers upon the Commissioner of Immigration the power and discretion to grant bail in deportation proceedings, but does not grant to aliens the right to be released on bail. The use of the word "may" in said provision indicates that the grant of bail is merely permissive and not mandatory or obligatory on the part of the Commissioner. The exercise of the power is wholly discretionary (*U. S. ex rel. Zapp. et al. vs. District Director of Immigration and Naturalization*, 120 F. 2d. 762; *Ex parte Perkov*, 45 F. Supp. 864; *Colyer vs. Skeffington*, 265 F. 17). The determination as to the propriety of allowing an alien, subject to deportation under the Immigration Act, to be released temporarily on bail, as well as the conditions thereof, falls within the exclusive jurisdiction of the Commissioner, and not in the courts of justice. The reason for this is that the courts do not administer immigration laws. Thus, this Court in the habeas corpus case of *Chirskoff vs. Commissioner of Immigration, et al.* (G. R. No. L-2838, res. of August 22, 1949) denied the petitioner's petition for bail, and held that the Commissioner of Immigration is the one who has the jurisdiction to entertain such a petition, in this wise:

"Acting upon the petition for bail filed by the petitioner in L-2838 (*Vadim N. Chirskoff vs. The Commissioner of Immigration, et al.*), the Court ordered that said petition be denied as the same is hereby denied, without prejudice to its presentation before the Commissioner of Immigration who has jurisdiction and manifested willingness to grant bail to petitioner." (Italics supplied.)

Even so, the power to grant bail, it seems, has to be exercised by the Commissioner while the alien is still under investigation, for there is no provision of law expressly authorizing such release after the order of deportation has been issued by the Board of Immigration (See *Bengzon vs. Ocampo, et al.*, *supra*.)

The right to bail guaranteed by the Constitution may not be invoked in favor of petitioners-appellees, considering that deportation proceedings do not constitute a criminal action (*Lao Tang Bun vs. Fabre*, 81 Phil., 682; *U. S. ex rel. Zapp, et al. vs. District Director of Immigration and Naturalization*, *supra*) and the order of deportation is not a punishment for a crime (*U. S. vs. Go-Siaco*, 12 Phil., 490; *Mahler vs. Eby*, 264 U. S. 32), it being merely for the return to his country of an alien who has broken the conditions upon which he could continue to reside within our borders (*U. S. vs. De los Santos*, 33 Phil., 397, *Lao Tang Bun vs. Fabre*, *supra*).

The case of *U. S. vs. Go-Siaco* (12 Phil., 490) is not in point, because said case was a proceeding brought under the provisions of Act No. 702 which falls, by provision of said law, under the jurisdiction of the courts of justice. The case at bar is a deportation proceeding under the Philippine Immigration Act of 1940, which expressly vests in the Commissioner of Immigration the exclusive and full discretion to determine whether an alien subject to deportation should or should not be granted bail. And the fact that petitioners-appellees herein instituted the present habeas corpus proceeding before the Court of First Instance of Manila does not place them in the custody

of said court, so as to deprive the Commissioner of Immigration of his supervision over them and of his discretionary power to grant bail. As we pointed out in *Collector of Customs vs. Harvey, et al.* (34 Phil., 503):

"The writ of habeas corpus, which was presented in the lower court did not put the relator into the custody of the court. The courts can not enlarge the rights of Chinese aliens simply because they have presented a writ of habeas corpus. If they are not entitled to bail during the pendency of the petition for the writ of habeas corpus, they are much less entitled to it after the court has denied their petition."

And in the instant case, the lower court denied the petition for a writ of habeas corpus.

It is true that in the cases of *Boris Mejoff* (90 Phil., 70) and *Victor Borovsky* (90 Phil., 107) both decided in September, 1951, *Chirskoff vs. Commissioner of Immigration* (90 Phil., 256) and *Andreu vs. Commissioner of Immigration* (90 Phil., 347), this Court, after having denied their petitions for habeas corpus in 1949, granted their second petition and ordered their release from custody by the immigration authorities on the ground that petitioners being stateless and there being no country to which they could legally be deported or willing to receive them, their indefinite detention would constitute an unwarranted deprivation of their liberty. This Court also took into account the fact that therein petitioners had been under detention for over 2 years. In the case at bar, it should be noted, the herein petitioners at the time their release on bail was ordered by the lower court, had been in detention for only 2 months and while they themselves and the government were about to terminate negotiations for their departure to Hongkong, from whence they came, or to Taipei, their own country. It appears from all indications, that were it not for the order of release obtained from the trial court, petitioners herein would have already gone out of the Philippines of their own volition as promised by them they were first ordered deported. The case of the petitioners, therefore, is different from those of *Borovsky*, *Mejoff* and *Andreu* who, being stateless, could not, through no fault of their own, be legally deported from the Philippines. Also in the cases of *Borovsky* and *Mejoff*, they did not come to the Philippines voluntarily, but were brought here by the Japanese Army, in all appearance against their own wishes. In the present case, petitioners came to the Philippines on their way from Japan to Hongkong, their place of residence to where they were returning. They, however, were allowed to disembark here upon the pretext of changing boat and upon promise of continuing their trip to Hongkong within a period of 2 weeks. However, when once here, instead of taking advantage of the availability of both sea and air transportation, petitioners did not depart within the promised period and allowed their reentry permit to Hongkong to lapse in April, 1953. There is, therefore, absolutely no question that herein petitioners are here in the Philippines unlawfully and in violation and defiance of our immigration laws, and continue to stay illegally not because of impossibility of their deportation but of circumstances of their own making.

In a recent case,[1] we had occasion to state the following:

"\* \* \*. In the instant case, petitioner is a Chinese citizen and not a stateless alien, and has a known country, Formosa (from whence he came), to which he may be removed. If there is any delay in the shipment of petitioners from this country, it is not due to the fault or negligence of the Government or of its officers. If diplomatic negotiations which have been pursued relentlessly by our Government have not yielded tangible results leading to the immediate or early removal of petitioner and other aliens similarly situated, the delay should not be considered a ground for declaring the order of deportation *functus officio*. Otherwise, it would be within the power of the countries of undesirable aliens ordered deported from this country to render ineffective or unenforceable warrants of deportation, by simply frustrating all diplomatic efforts aimed at their removal from this country.

"In conclusion, we hold and declare that, as long as the continued detention of a deportee is not attributable to the fault or negligence of the government or of its officers, and his deportation is not rendered impossible by his citizenship status by reason of which no country or ship will accept him, warrant for his deportation should stand in all its force and vigor, rather than be declared *functus officio*."

Following the rationale of this cited case, we find that the lower court, under the facts and circumstances of the case at bar, committed an error in ordering petitioners' release on bail after it denied their petition for a writ of habeas corpus.

Wherefore, the decision appealed from is hereby reversed and set aside, insofar as it orders petitioners-appellees' release pending their actual deportation. In all other respects, said decision is affirmed, without costs.

So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, and De Leon JJ., concur.

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[1] Originally appealed to the Court of Appeals but later certified to us because it involves questions of law.

[1] Tan Seng Pao vs. Commissioner of Immigration, 107 Phil., 742; 57 Off. Gaz. [38] 6790.

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