

TIU CHUN HAI AND GO TAM PETITIONER, V.S. THE DEPORTATION BOARD RESPONDENT.

G.R. No. L-10109. May 18, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Petitioners have come before this Court seeking to set aside an order of the Deportation Board which denies their motion to be allowed to put up a bail for their provisional liberty pending final termination of the proceedings before said Board. Incidentally, they request that they be released on bail in such amount as this Court may determine.

Petitioners are Chinese aliens who were admitted to the Philippines as temporary visitors. On October 21, 1950, Go Tarn was ordered deported by the Bureau of Immigration because the period of his stay had expired. He was however allowed to enjoy provisional freedom under bond pending his deportation. On August 31, 1955, he was arrested by virtue of a warrant issued by the Bureau of Immigration for violation of the conditions of the bond for his temporary release. On the same date, Tiu Chun Eai was likewise taken into custody on the strength of a warrant issued by said Bureau for the same reason that he had overstayed in this country. And this charge having been substantiated, he was ordered deported in a decision rendered by the Bureau on December 21, 1955.

On October 17, 1955, petitioners filed a petition for habeas corpus with the Court of First Instance of Manila against the Commissioner of Immigration, together with the Director of the National Bureau of Investigation, which was granted on November 18, 1955. The case was appealed to the Supreme Court and at this writing the appeal is still pending consideration. Notwithstanding said decision and appeal, petitioners continued in the legal custody of the Commissioner of Immigration because they were not granted the privilege of putting up a bond for their provisional liberty.

On November 22, 1955, the special prosecutor of the Deportation Board filed a complaint against petitioners for illegally procuring, buying and possessing U.S. Dollars and smuggling them out of the country; praying that their deportation as undesirable aliens be recommended to the President of the Philippines. Upon the filing of said complaint, warrants for the arrest of petitioners were issued by the Deportation Board on November 22 and 23, 1955.

On November 25, 1955, petitioners filed with the Deportation Board a petition for bail for their provisional liberty. While said petition was under consideration, the Director of the National Bureau of Investigation, in a letter sent to the Board, opposed the petition on the ground that it would "allow them to continue their nefarious activities of dollar smuggling." This opposition was reiterated in a subsequent letter served by said officer adducing additional grounds and laying stress on the fact that a request made by the Philippine government to the Government of the Republic of China for the repatriation of petitioners was under consideration by the latter. And upon order of the Board, copies of these Letters were served upon the counsel of petitioners, and the hearing of the motion for bail was set on December 21, 1955.

On the date last mentioned, petitioners filed their reply to the opposition interposed by the Director of the National Bureau of Investigation. To be able to ascertain whether the evidence of guilt against petitioners is strong, the Board postponed the hearing until after the initial trial of the deportation case on the merits, and, accordingly, issued an order setting the trial on December 24, 26 and 27; 1955. After the initial trial on December 24, and finding among other things, that there is direct evidence to support the charge and that, in any case, there are standing orders for their deportation by the Bureau of Immigration, the Deportation Board issued on the aforesaid date an order denying petitioners petition for bail.

The question before us is whether petitioners are entitled to provisional liberty on bail under the Constitution or any existing statute pending the termination of the proceedings instituted against them before the Deportation Board.

It is contended for petitioners that "The constitutional guaranty to bail is available not only to persons against whom a complaint or information has already been formally filed but also to persons arrested, detained or otherwise deprived of their liberty. x x x Arrest, detention or restraint by the proper authorities on the ground of an alleged commission of an offense is all that is necessary in order to entitle the suspect to bail." (Teehankee v. Rovira, 75 Phil., 634) And this is so because, it is contended, under the Constitution "All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong" (Article III, section 1, paragraph 16). And considering that the offense with which petitioners were charged before the Deportation Board is not capital, but one involving alleged possession and smuggling of U.S. dollars and checks, the granting of bail to them is not a matter of judicial discretion on the part of the Board, but a matter of right on the part of petitioners. Respondent Board therefore, it is contended, has committed a grave abuse of discretion, or has acted in excess of its authority, when it denied the petition of petitioners for bail.

To this theory we fail to agree. There is nothing in our Constitution nor in section 69 of the Revised Administrative Code, which vests in the President of the Philippines the power of deportation of undesirable aliens, from which we can infer that the right of aliens facing charges before the Deportation Board to temporary liberty on bail is guaranteed. The provision in our Constitution which guarantees the right to bail to all persons before conviction except when charged with capital offenses when the evidence of guilt is strong, invoked by petitioners, merely applies to persons accused of offenses in criminal actions. This is the clear import of said provision. In fact, this is the interpretation given by this Court in the very case cited by, counsel,[1] wherein it was stated that "the general rule is that any person", before being convicted of any criminal offense, shall be bailable, except when he is charged with capital offense' and the evidence of guilt is strong." And considering that deportation proceedings are not criminal in nature, or are "in no proper sense a trial and sentence for a crime or offense",[2] but a procedure merely devised by the Chief Executive to enable him to exercise properly the power of deportation vested in him by law (See Executive Order No. 398, as amended), it follows that the right to bail in deportation proceedings, is not a matter of right on the part of petitioners, but a matter of discretion on the part of the Deportation Board, And to underscore this policy of the Chief Executive, it was therein provided that an alien may file a bond pending the investigation of the charges preferred against him in such amount as the Chairman of the Board may prescribe on condition that "if at any stage of the proceedings it appears to the Board that there is strong evidence against the respondent or there is strong probability of his escaping or evading the proceedings of the Board, it may order his arrest and commitment." Undoubtedly, respondent Board, In denying petitioners' petition for bail, merely made use of its sound discretion in line with this directive of the Chief Executive.

The contention that the right to bail as applied to deportation proceedings is part of due process guaranteed by our Constitution, is also untenable because, as it has been held, "the order of deportation is not a punishment for

crime", nor does It constitute deprivation of life, liberty or property (Fong Yue Ting v. U.S., 149 U.S. 698). Due process in deportation cases implies merely a full and fair hearing which includes the right of respondent to be heard by himself or counsel, to confront and cross-examine the opposing witnesses, and to produce witnesses in his own behalf (Whitefield v. Hangss, 222 Fed.745, 749). Or, as stated in section 69 of the Revised Administrative Code, it only means that the person subject of deportation "shall be informed of the charge or charges against him and (he) shall be allowed not less than three days for the preparation of his defense" and shall "have the right to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross examine the opposing witnesses" "Verily, this does not include the right to bail which is left entirely to the discretion of the Chief Executive or his duly authorized representatives.

It appears that petitioners were facing deportation by order of the Bureau of Immigration because they had long exceeded the period of their stay in this country, when criminal charges for illegal possession and smuggling of U.S dollars were filed against them before the Deportation Board. It also appears that the Board did not act on their petition for bail until after it had become satisfied that the charges were based on sufficient evidence, as it effect it found that there is direct evidence implicating them in the commission of the aforesaid irregularity which makes them undesirable to continue in this country. In the circumstances, it cannot be pretended that the Board has abused its discretion in denying their petition for bail for in so doing it merely acted in line with an express directive of the Chief Executive. We are therefore persuaded to conclude that the pre-sent petition is without merit.

Wherefore, petition is denied, with costs against petitioners.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

[1] Herras v, Teehankee, 75 Phil., 634

[2] Fong Yue Ting v. United States, 149 U.S. 698; See also Lao Tang Bun, et al. v. Fabre. et al., 40 O.G. No, 1, Supp, pp. 489-490 and Molden y. Collector of Customs, 34 Phil., 495, 497.

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