

**J. ANTONIO M. CARPIO AND GRACE VINZONS-MAGANA,
PETITIONERS, VS. LT. COL. EDGAR GUEVARA, AS CAMP
COMMANDANT, CAMP BAGONG IBALON, REGIONAL COMMAND V,
RESPONDENT.**

G.R. No. L-57439. August 27, 1981

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

It is the claim of petitioners J. Antonio M. Carpio and Grace Vinzons-Magana in this application for the writ of habeas corpus filed on July 20, 1981, that their detention at Camp Bagong Ibalon, Legaspi City is illegal, there being no valid authority for the warrants of arrest respectively issued against them on July 2 and 3, 1981. The Presidential Order of Arrest was allegedly signed on June 26, 1981 for the violation of Art. 138 of the Revised Penal Code dealing with incitement to rebellion, Presidential Decree No. 885, the amended Anti-Subversion Law, and Presidential Decree No. 33 on the possession and distribution of subversive materials. It was further alleged that petitioners were only shown a copy of what appeared to be a radiogram, no signed copy of the order having been furnished them. It was then alleged that there was no justification for their detention, that martial law having been terminated on January 17, 1981 and President Marcos himself having "banned the use of military processes of arrest and issued a letter of instruction ordering that, thenceforth, all arrests, even for alleged crimes involving national security, must undergo normal judicial processes."^[1]

The next day, on July 21, 1981, this Court issued a writ of habeas corpus requiring respondent to make a return not later than Tuesday, July 28, 1981 and setting the case for hearing on July 30, 1981. In the return of the writ, the detention of petitioners was characterized as "lawful and valid, having been done by virtue of a presidential commitment order, issued pursuant to the reservation of power under Presidential Proclamation 2045, exercised by the President on the strength of the evidence before him."^[2] Nonetheless, at the hearing on July 30, 1981, to quote from the language of the resolution of this Court of that date: "The Solicitor General manifested that President Ferdinand E. Marcos issued an order yesterday directing the temporary release of detainees-petitioners J. Antonio M. Carpio and Grace Vinzons-Magana on recognizance of Assemblyman Marcial Pimentel. On his part, Senator Diokno (a) manifested that yesterday morning, after he met the petitioners at the airport, they all reported to the military authorities and in such conference, Deputy Minister Carmelo Barbero turned over the custody of petitioners-detainees to Senator Diokno for which he signed a receipt to produce them in today's hearing, and (b) requested that the hearing of this case be postponed until further orders of the Court, with the petitioners-detainees in the meantime to stay in his custody."^[3]

The Court then resolved to: "(1) postpone the hearing of this case until further notice; (2) declare that pending the full implementation of the order of release and on the authority of this Court, aforesaid detainees-petitioners shall remain in the custody of Senator Diokno on his recognizance; and (3) grant the Solicitor General until 4:00 o'clock in the afternoon of Monday, August 3, 1981 within which to submit a manifestation as to whether or not said release has been implemented, with the certificate of release therein included."^[4] There-after, on August 3,

1981 this manifestation and motion was filed by Solicitor General Estelito Mendoza:[5] "1. That he received today, August 3, 1981, a letter from the Constabulary Judge Advocate, a copy of which is attached herewith as Annex 1, informing him that petitioners J. Antonio M. Carpio and Grace Vinzons-Magana have been ordered released by the Chief of the Office of Detainee Affairs on July 31, 1981. The copies of the release orders of petitioners are attached herewith as Annexes 2 and 3. While petitioners' release is to be formally made by the Regional Command 5, Camp Bagong Ibalon, Legaspi City as soon as they present themselves thereat, petitioners have in fact been released from military custody as early as on July 30, 1981 per the letter of the Constabulary Judge Advocate. 3. In view of the temporary release of petitioners, the present petition for habeas corpus should be considered moot and academic."[6]

His prayer is for the dismissal of the case on the ground of its moot and academic character.

The plea is impressed with merit. With the release of petitioners, the prayer is justified. No further action need be taken on the application for the writ of habeas corpus except to dismiss it for having become moot and academic. It is re-assuring to note that the President, upon being informed of the circumstances of the case, decided to set petitioners at liberty. With the lifting of martial law, the people have a right to expect that reliance on the constitutional right to peaceable assembly would not be visited with adverse consequences. It should be safeguarded and respected not only by courts but by other public officials, especially those entrusted with the task of maintaining peace and order. The danger to public security that could conceivably arise by people gathering en masse is certainly much less. It is quite true that turbulence may mark such an event. One who is responsible certainly can be held accountable if the assembly is utilized for illegal purposes. The guilty parties can be duly proceeded against. In the absence of such a showing, it is of the essence in a constitutional government that no encroachment on the rights of an individual is permissible.

What was said by Chief Justice Hughes with force and eloquence in *De Jonge v. Oregon*[7] possesses relevance: "These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government. It follows from these considerations that, consistently with the Federal Constitution, peaceable assembly for lawful discussion cannot be made a crime. The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge."[8]

It is understandable for the members of the Armed Forces, duty bound to maintain public peace, to display a certain degree of apprehension under conditions that could lead to the disruption of public order on a big scale. At the same time, zeal in the performance of their duties cannot justify any erosion in the respect that must be

accorded the liberties of a citizen. At any rate, with the President ordering the release of petitioners, an untenable situation has been resolved and the grant of the petition rendered unnecessary.

WHEREFORE the petition is dismissed for being moot and academic.

Teehankee, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Barredo and Abad Santos, JJ., on official leave.

[1] Petition, par. 4.02.

[2] Return to the Writ, par. 11.

[3] Resolution dated July 30, 1981.

[4] Ibid.

[5] He was assisted by Assistant Solicitor General Roberto E. Soberano and Solicitor Roberto A. Abad.

[6] Manifestation and Motion, 1-2.

[7] 299 U.S. 353 (1936).

[8] Ibid, 364-365.

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