

GO TIAN CHAI, PETITIONER AND APPELLEE, VS. THE COMMISSIONER OF IMMIGRATION, AND THE OVERSEER, DETENTION STATION OF THE BUREAU OF IMMIGRATION, RESPONDENTS AND APPELLANTS.

G.R. No. L-20645. September 22, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

The Solicitor General, on behalf of the Commissioner of Immigration, is appealing solely from that portion of the decision of the Court of First Instance of Manila (in Sp. Proc. No. 52302), ordering the temporary release of Go Tian Chai on bail, if the herein appellant Commissioner will be unable to deport him within six months from the date of the decision.

There is no dispute as to the facts of this case. Petitioner-appellee is a Chinese national who was admitted as temporary visitor into the country on April 23, 1947. Having failed to leave when his visa expired, notwithstanding several extensions granted to him, he was arrested by the immigration authorities on March 17, 1950. During the deportation proceedings filed against him, he was temporarily released under bail. On February 19, 1951, the Board of Commissioners of the Bureau of Immigration in a unanimous decision, found and declared him to have unlawfully overstayed in the Philippines, and ordered his deportation to the country of his origin, on the first available transportation. Although the warrant of deportation was issued by the Commissioner of Immigration on March 8, 1951, Go Tian Chai was actually arrested and taken in custody by the immigration authorities only on October 8, 1962.

On November 26, 1962, and while he was being detained pending his actual deportation to Formosa, Go Tian Chai filed a petition for habeas corpus in the Court of First Instance of Manila, alleging that representations made by his counsel for his admission to Taiwan (Formosa) were futile, and, as it was unlikely that the Philippine government would be able to effect his deportation in accordance with law in the near future, petitioner prayed that he be allowed temporary liberty on bail, citing in support thereof, the pronouncement of this Court in the case of *Borovsky vs. Commissioner*, [1] that a foreign national, not an enemy, and against whom no criminal charges have been formally made or judicial order issued, was also entitled to the protection against deprivation of liberty without due process of law.

On December 8, 1962, the court rendered decision in the case, in part reading as follows:

"The Court can take judicial notice of the fact that the Philippine Government, represented by the Department of Foreign Affairs, is negotiating with Chinese Nationalist Government for the repatriation or the deportation of the so-called overstaying Chinese. These matters naturally will take time before a final agreement can be arrived at. The petitioner was arrested only on October 8, 1962. The petition was filed on November 26, 1962, or less than two months from the time of the petitioner's arrest and detention. It cannot be said, therefore, that the petitioner has been detained for an unreasonable length of time pending his deportation. On the other hand,

the negotiations between the Philippine Government and the Taiwan Government may drag on for a long time, and it would be unjust to detain the petitioner for as long a time as the negotiations are pending. As indicated in the case of *Borovsky vs. The Commissioner of Immigration*, Courts may fix a time limit within which the imprisoned aliens should be deported, at the expiration of which their release should be ordered by writ of habeas corpus. Considering the circumstances, the Court believes that period of six (6) months from the date of this order within which the respondent should effect the deportation of the petitioner is in the light of circumstances a reasonable time.

"WHEREFORE, the petition is hereby denied, but if the respondent Commissioner of Immigration is unable to deport the petitioner within six (6) months from the date of this order, then he is hereby ordered to release him on bail in such amount as he may deem proper."

In this appeal, the appellant Commissioner of Immigration contends that it was error for the lower court to order the release of petitioner on bail if the deportation order could not be carried out in six months, because (1) it practically compels the Philippine government to conclude or complete the negotiations with the Chinese government for the admission of overstaying Chinese nationals, in six months; (2) unlike in the *Borovsky* case, herein petitioner-appellee is not a stateless individual, but a Chinese national who can be admitted to his country, Formosa; and (3) courts have no authority to interfere with the exercise by the Commissioner of Immigration of his power of deportation.

The issue involved in this case, that is, whether a Chinese national who has been duly found to be subject to deportation may be ordered released on bail during the pendency of the negotiations between the Philippine Government and the Republic of Nationalist China for their re-admission to China of overstaying Chinese in the Philippines, is not new. It has already been ruled that there is nothing "unjust" in the detention of unlawfully overstaying Chinese nationals pending their actual deportation to their own country, because such detention is in accordance with Philippine laws, and its continuance is through no fault of our government and of our officials. Thus, in the case of *Tan Seng Pao vs. Commissioner of Immigration*, [2] this Court, passing upon the same question, said:

"x x x 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.

Also, we agree with the contention of appellant that the lower court committed an error in ordering petitioner-appellee's release on bail after six months from the date of the decision. It is to be noted that appellee was arrested and detained after the immigration authorities had ordered his deportation pursuant to law. In a similar case, [3] we disposed of the same question in this wise:

"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 v. Manoogian*, 16 F. 2d. 422; *U.S. ex rel. Papis vs. Tomlinson*, 45 F. Supp. 447; *U. S. ex rel. Iaonniss vs. Garfinkle*, 44 F. Supp. 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. v. District Director of Immigration and Naturalization, 120 F. 2d. 762; Ex parte Perkov, 45 F. Supp. 864; Colyer v. 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."

For the foregoing considerations, the decision of the lower court, insofar as it orders the release of petitioner-appellee on bail if the latter is not deported in six months from the issuance of said decision, is hereby annulled and set aside. The dismissal of the petition for habeas corpus is affirmed. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

Regala, J., on leave, no part.

[1] G.R. No. L-4352, September 28, 1951.

[2] G.R. No. L-14246, April 27, 1960.

[3] Ong Hee Sang, etc., et al. vs. Hon. Commissioner of Immigration, et al., Feb. 28, 1962.

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