

IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF MAURO MAGTIBAY Y PENTINIO, CHAIRMAN SEDFREY A. ORDOÑEZ, COMM. NARCISO C. MONTEIRO, COMM. MERCEDES V. CONTRERAS, COMM. NASSER A...*G.R. No. 121424. March 28, 1996*

Ponente: PANGANIBAN, J.

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Before us is a Petition for Habeas Corpus filed by the Commission on Human Rights, for the immediate release of Mauro P. Magtibay, the accused-appellant in G.R. No. 104992, entitled "People vs. Mauro Magtibay," pending before this Court. In the latter case (which has been consolidated with the instant case per Resolution of this Court dated September 4, 1995), accused-appellant is contesting his conviction by the Regional Trial Court of Batangas City, Branch III for violation of Sec. 4, Art. II of R.A. No. 6425, otherwise known as The Dangerous Drugs Act of 1972, as amended. The accused-appellant was caught in flagrante delicto selling ten (10) grams of dried marijuana leaves during a buy-bust operation conducted on August 21, 1989 in Cuenca, Batangas. Sentenced to suffer the penalty of life imprisonment, accused-appellant has been under preventive detention at the New Bilibid Prison since August 21, 1989 or for more than six (6) years as of the date of the Petition.

Petitioners now seek the immediate release of accused-appellant on the ground that the latter has already served the term of imprisonment applicable to his offense as provided under R.A. 7659, otherwise known as "An Act to Impose Death Penalty on Certain Heinous Crimes."

By way of background: R.A. 7659, which took effect on December 31, 1993, partly amended R.A. No. 6425, by providing, inter alia, that if the quantity of the prohibited drugs involved is less than 750 grams, the penalty of imprisonment is reduced to a range of from prison correctional to reclusion perpetua depending on the quantity of marijuana involved; in contrast, Sec. 4, Art. II of R.A. 6425 formerly provided for imprisonment ranging from 12 years and one day to 20 years of prison mayor. Pursuant to the new legislation, this Court ruled in *People vs. Simon*, (234 SCRA 555, 573 [July 29, 1994]) and in *People vs. De Lara*, (236 SCRA 291 [September 5, 1994]) that where the quantity of marijuana leaves involved is below 250 grams. The penalty to be imposed shall be prison correccional.

On November 13, 1995, the First Division of this Court referred these consolidated cases to the Third. In response to the Resolution of this Court dated February 14, 1996, the Office of the Solicitor General filed its Manifestation in Lieu of Comment, averring that it interposes no objection to the immediate release of accused-appellant as prayed for in the Petition. The Solicitor General further declared: "Considering the report of Magdalena M. Mogridge, Chief, Documents Section of the Bureau of Corrections, (Annex "I" hereof), appellant is now eligible for immediate release, pursuant to Article 29 of the Revised Penal Code, having undergone preventive imprisonment for a period of more than the possible maximum imprisonment to which he may be sentenced."

IN VIEW OF THE FOREGOING, the Petition in G.R. No. 121424 is hereby GRANTED, and the

accused-appellant Mauro P. Magtibay is hereby ORDERED RELEASED IMMEDIATELY, unless he is being detained on some other legal charge. The Petition in G.R. No. 104992 is DISMISSED for being moot and academic.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

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