IN THE MATTER OF THE PETITION FOR HABEAS CORPUS ENGR. ASHRAF KUNTING, PETITIONER.

G.R. NO. 167193. April 19, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for the issuance of a writ of habeas corpus directing Police Chief Superintendent Ismael R. Rafanan and General Robert Delfin,[1] Philippine National Police (PNP) Intelligence Chief, to bring petitioner Ashraf Kunting before this Court and show cause why he is illegally detained.

The antecedents are as follows:

On October 19, 2001, petitioner Kunting was arrested in Malaysia for violation of the Malaysian Internal Security Act. On June 12, 2003, the Royal Malaysian Police in Kuala Lumpur, Malaysia, turned over Kunting to the PNP-IG and Task Force Salinglahi pursuant to warrants for his arrest issued by the Regional Trial Court (RTC) of Isabela City, Basilan, Branch 2, Ninth Judicial Region. Kunting was charged with four counts of Kidnapping for Ransom and Serious Illegal Detention with the RTC under separate Amended Informations, docketed as Criminal Case Nos. 3674-1187, 3537-1129, 3608-1164, and 3611-1165.

Petitioner was immediately flown to the Philippines and brought to the PNP-IG at Camp Crame for booking and custodial investigation.

In a letter dated July 3, 2003, Atty. Guillermo G. Danipog, Jr., Police Superintendent and Chief of the Legal Affairs Division, PNP-IG, informed the Branch Clerk of Court of the RTC that Kunting was already in the custody of the PNP-IG. Atty. Danipog requested for Kunting's temporary detention at the PNP-IG, Camp Crame, Quezon City due to the high security risks involved and prayed for the issuance of a corresponding commitment order.

In a letter dated July 9, 2003, Emilio F. Enriquez, Acting Clerk of Court of the RTC, replied to the request of Atty. Danipog, thus:

> x x x
>
> The undersigned referred the matter to Hon. Danilo M. Bucoy, Presiding Judge of this Court, who issued the Alias Warrant of Arrest in the herein mentioned case (Criminal Case No. 3674-1187) and per his instruction, accused As[h]raf Kunting y Barreto [may be] temporarily detained thereat by virtue of the Alias Warrant of Arrest issued in this case, however considering that the accused is a high security risk, he should be brought to Isabela, Basilan as soon as the necessary security escort can be provided for his transfer, where the proper commitment order can be issued as the herein mentioned case is about to be submitted by the prosecution.
>
> Thank you ever so much for your usual cooperation extended to the Court.[2]

On September 15, 2003, the RTC issued an Order directing the Police Superintendent and Chief, Legal Affairs

Division, PNP-IG, to immediately turn over Kunting to the trial court since Kunting filed an Urgent Motion for Reinvestigation.

On November 5, 2003, PNP-IG Director Arturo C. Lomibao wrote a letter to Chief State Prosecutor Jovencito R. Zuño, Department of Justice (DOJ), requesting for representation and a motion to be filed for the transfer of the venue of the trial from Isabela City, Basilan to Pasig City, for the following reasons: (1) Several intelligence reports have been received by the PNP-IG stating that utmost effort will be exerted by the Abu Sayyaf Group (ASG) to recover the custody of Kunting from the PNP considering his importance to the ASG; and (2) there is a big possibility that Kunting may be recovered by the ASG if he will be detained in Basilan due to inadequate security facility in the municipal jail and its proximity to the area of operation of the ASG.

On August 13, 2004, the RTC rendered a decision against petitioner's co-accused in the consolidated Criminal Case Nos. 3608-1164, 3537-1129, 3674-1187, and 3611-1165, finding 17 of the accused, who were tried, guilty of the crime/s charged.

On February 11, 2005, the RTC issued an Order denying Kunting's Motion to Set Case for Preliminary Investigation since the PNP-IG has not turned over Kunting. The trial court reiterated its Order dated September 15, 2003, directing the Police Superintendent and Chief, Legal Affairs Division, PNP-IG, to turn over Kunting to the court.

In a letter dated February 22, 2005, Police Chief Superintendent Ismael R. Rafanan reiterated the request to Chief State Prosecutor Jovencito R. Zuño to facilitate the transfer of the venue of the trial of Kunting's case, citing the same grounds in the previous letter. He added that if Kunting had been transferred to Isabela City, Basilan, he could have been one of the escapees in a jail break that occurred on April 10, 2004 as suspected ASG members were able to go scot-free.

On March 15, 2005, Police Inspector Amado L. Barbasa, Jr., OIC, Legal Affairs Division, PNP-IG, filed with the RTC a Motion to Defer Implementation of the Order dated February 11, 2005, citing, among other grounds, the existence of a pending motion for the transfer of the venue of the trial of Criminal Case No. 3537-1129 against Kunting, which was allegedly filed by the DOJ before this Court. Police Inspector Barbasa prayed that the Order of the RTC dated February 11, 2005, directing the turnover of Kunting to the court, be suspended until the motion for the transfer of venue is resolved.

On March 14, 2005, Kunting, by counsel, filed this petition for the issuance of a writ of habeas corpus. Kunting stated that he has been restrained of his liberty since June 12, 2003 by the PNP-IG led by Police Chief Superintendent Ismael Rafanan and assisted by PNP Intelligence Chief, General Robert Delfin. He alleged that he was never informed of the charges filed against him until he requested his family to research in Zamboanga City. It was discovered in the RTC of Isabela City, Basilan that his name appeared in the list of accused who allegedly participated in the kidnapping incident which occurred on June 2, 2001 in Lamitan, Basilan.

Kunting asserted that he never participated in the kidnapping incident, so he promptly filed an Urgent Motion for Reinvestigation on

September 8, 2003. He was aware that the PNP-IG requested Chief State Prosecutor Jovencito R. Zuño for representation to file a motion with this Court for the transfer of venue of his case from Isabela City, Basilan to Pasig City. Having no further information on the status of his case, he filed a Motion to Set Case for Preliminary Investigation on January 26, 2005. He stated that since no action was taken by the trial court or the DOJ, he filed this petition to put an end to his illegal detention classified in the records as "for safekeeping purposes only."

The main issue is whether the petition for habeas corpus can prosper.

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Under Section 1, Rule 102 of the Rules of Court, the writ of habeas corpus extends to "all case of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto." The remedy of habeas corpus has one objective: to inquire into the cause of detention of a person,[3] and if found illegal, the court orders the release of the detainee.[4] If, however, the detention is proven lawful, then the habeas corpus proceedings terminate.[5]

Section 4, Rule 102 of the Rules of Court provides when the writ is not allowed:

> SEC. 4. When writ not allowed or discharge authorized."If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.[6]

In this case, Kunting's detention by the PNP-IG was under process issued by the RTC. He was arrested by the PNP by virtue of the alias order of arrest issued by Judge Danilo M. Bucoy, RTC, Branch 2, Isabela City, Basilan. His temporary detention at PNP-IG, Camp Crame, Quezon City, was thus authorized by the trial court.

Moreover, Kunting was charged with four counts of Kidnapping for Ransom and Serious Illegal Detention in Criminal Case Nos. 3608-1164, 3537-1129, 3674-1187, and 3611-1165. In accordance with the last sentence of Section 4 above, the writ cannot be issued and Kunting cannot be discharged since he has been charged with a criminal offense. Bernarte v. Court of Appeals[7] holds that "once the person detained is duly charged in court, he may no longer question his detention by a petition for the issuance of a writ of habeas corpus."

Nevertheless, this Court notes that the RTC in its Order dated February 11, 2005 reiterated its Order dated September 15, 2003, directing the Police Superintendent and Chief, Legal Affairs Division, PNP-IG, Camp Crame, Quezon City, to turn over Kunting to the court. The trial court has been waiting for two years for the PNP-IG to turn over the person of Kunting for the trial of his case. The PNP-IG has delayed the turn over because it is waiting for the DOJ to request for the transfer of venue of the trial of the case from Isabela City, Basilan to Pasig City. In the absence of evidence that the DOJ has indeed filed a motion for the transfer of venue, In its Comment, the Office of the Solicitor General stated that the PNP-IG is presently awaiting the resolution of the Motion for Transfer of Venue it requested from the DOJ. In this regard, t the Police Chief Superintendent is, therefore, directed to take positive steps towards action on said motion.comply with the Order of the trial court, dated February 11, 2005, to turn over the body of petitioner Kunting to the trial court..

WHEREFORE, the instant petition for habeas corpus is hereby DISMISSED.

No costs.

SO ORDERED.

Sandoval-Gutierrez, (Acting Chairperson), Corona, and Garcia, JJ., concur.
Puno, J., (Chairperson), on leave.

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[*]On Leave.[**]Acting Chairperson.[1] In his Comment, Police Chief Superintendent Ismael R. Rafanan stated that Police Director Robert C. Delfin retired from the PNP on May 21, 2005.

[2] Rollo, p. 131.

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[3] In the Matter of the Petition for Habeas Corpus of Capt. Gary Alejano, et al., G.R. No. 160792, August 25, 2005.

[4] In Re: Azucena L. Garcia, G.R. No. 141443, August 30, 2000, 339 SCRA 292.

[5] Supra, note 1.

[6] Emphasis supplied.

[7] G.R. No. 107741, October 18, 1996, 263 SCRA 323.

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