

## EN BANC

[ G.R. No. 153454, July 07, 2004 ]

**AGUS DWIKARNA, PETITIONER, VS. HON. ANDREA D. DOMINGO, COMMISSIONER, BUREAU OF IMMIGRATION, GEN. LEANDRO MENDOZA,<sup>[\*]</sup> CHIEF, PHILIPPINE NATIONAL POLICE, GEN. JAIME G. CARINGAL, CHIEF, INTELLIGENCE GROUP, PHILIPPINE NATIONAL POLICE, RONALDO P. LEDESMA, CHIEF, BUREAU OF SPECIAL INQUIRY, AND THE BOARD OF COMMISSIONERS, BUREAU OF IMMIGRATION, RESPONDENTS.**

### DECISION

**CORONA, J.:**

Before us is a petition for *certiorari*, prohibition and mandamus, filed under Rule 46, in relation to Rule 56, Sections 1 and 2 of the Revised Rules of Court, with a prayer for a temporary mandatory injunction for the immediate release of petitioner from detention.

The facts of the case follow.

On March 13, 2002, at around 7:25 p.m., petitioner Agus Dwikarna and two other Indonesian nationals, namely, Abdul Jamal Balfas and Hamsid Lin Rung, were at the Ninoy Aquino International Airport, checking in their luggage for x-ray screening in preparation for their departure for Bangkok, Thailand. The police authorities apprehended them when they were found to be in possession of two pieces oval-shaped C-4 plastic explosives and five pieces detonating cords.

The following day, on March 14, 2002, an information was filed against petitioner and his two companions in the Regional Trial Court of Pasay City, Branch 117, for violation of PD 1866 (illegal possession of firearms and ammunition), as amended. The accusatory part of the information read:

That on 13 March 2002, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring and confederating, together and mutually helping one another, with intent to possess, did then and there, willfully, unlawfully and feloniously have in their possession, custody and control, incendiary devices capable of producing destructive effects on contiguous objects and/or causing injury or death to persons without the necessary license and authority to possess the same, viz. : two (2) pcs. oval shaped C-4 plastic explosives and five (5) pcs. detonating cords.

CONTRARY TO LAW.<sup>[1]</sup>

The case was docketed as Criminal Case No. 02-0576.

On March 19, 2002, a charge sheet was filed by the special prosecutor of the Bureau of Immigration against petitioner and his two co-accused, docketed as D.C. No. ADD No. 02-004, for violation of section 37 (a) (7) of the Philippine Immigration Act of 1940, as amended. The charge sheet read:

The undersigned Special Prosecutor charges for deportation, AGUS DWIKARNA, ABDUL JAMAL BALFAS and TAMSIL LIN RUNG all Indonesian nationals for violation of Sec. 37 (a) (7) of the PIA of 1940, as amended, committed as follows:

That herein respondents were arrested at the NAIA on 13 March 2002 at about 7:25 p.m. for violation of P.D. 1866 by joint elements of PNP, IG, NICA, BID, PAF-AISG in cooperation with ASG, PNP and under the supervision of TASK FORCE 'SANGLAHI'.

That on or about 7:15 PM March 13, 2002 the trio, AGUS DWIKARNA, ABDUL JAMAL BALFAS and TAMSIL LIN RUNG entered the International Terminal 1, Pasay City, and submitted themselves for routine security check. However, during the course of the inspection by the IRASCO personnel, PNP-ASG, the pieces of luggage of the trio yielded components for making improvised explosive devices (IEDs) without necessary and legal authority to possess the said items.

That consequently the corresponding charge for violation of PD 1866 was filed before Pasay City prosecutor. Office and Inquest Prosecutor Bernabe Augustus C. Solis ordered their detention with the PNP Intelligence Group.<sup>[2]</sup>

On March 25, 2002, the charge sheet was amended and petitioner and his co-accused were further charged with violation of section 37 (a) (8) of the same Act. The amended charge sheet read:

The undersigned Special Prosecutor charges for deportation, AGUS DWIKARNA, ABDUL JAMAL BALFAS, TAMSIL LIN RUNG all Indonesian nationals for violation of Sec. 37 (a) (7) of the PIA of 1940, as amended, committed as follows:

That herein respondents were arrested at the NAIA on 13 March 2002 at about 7:25 p.m. for violation of P.D. 1866 by joint elements of PNP, IG, NICA, BID, PAF-AISG in coordination with ASG, PNP and under the supervision of TASK FORCE 'SANGLAHI'.

That on or about 7:15 PM March 13, 2002 the trio AGUS DWIKARNA, ABDUL JAMAL BALFAS, TAMSIL LIN RUNG entered the International Terminal 1, Pasay City, and submitted themselves for routine security check. However, during the course of the inspection by the IRASCO personnel, PNP-ASG, the pieces of luggage of the trio yielded components for making improvised explosive devices (IEDs) without necessary and legal authority to possess the said items;

That they are likewise charged for violation of Sec. 37 (a) (8) of the Philippine Immigration Act of 1940, as amended, committed as follows:

Being members of the Islamic extremist movements particularly the Jema'ah Islamiah and Mejahidoon Indonesia, they are involved in riots in Indonesia and organized (*sic*), advocates, or teaches the assault of public official and destruction of public and private property and overthrow of organized government, thus they are undesirable aliens.<sup>[3]</sup>

Meanwhile, petitioner and his co-accused were allowed to post bail for their provisional liberty, per the release order dated March 22, 2002, issued by the trial court in Criminal Case No. 02-0576. However, the order stated that the release was subject to the condition that "*there exist(ed) no other legal cause to the effect that they remain confined under your custody.*" Since petitioner and his co-accused were charged with violation of the Philippine Immigration Act of 1940, as amended, and were ordered detained by the Bureau of Immigration, their temporary release could not be effected.

Aggrieved, petitioner and his co-accused filed a petition<sup>[4]</sup> for *habeas corpus* at the Court of Appeals in CA-G.R. SP No. 70045 on April 11, 2002, alleging in the main that petitioner and his co-accused were "illegally arrested and illegally restrained of their personal liberty in violation of their human rights."

While the case was pending resolution by the Court of Appeals, the information against Tamsil Lin Rung and Abdul Balfas in Criminal Case No. 02-0576 was withdrawn.<sup>[5]</sup> Consequently, Lin Rung and Balfas were released from custody and the deportation case with respect to them were likewise dismissed.<sup>[6]</sup> That left Dwikarna as the sole petitioner in the case.

On April 29, 2002, the Court of Appeals dismissed the petition for *habeas corpus*:

Without passing on the legality of the arrest of petitioner DWIKARNA, but even assuming *arguendo* that his arrest was illegal, supervening events bar his subsequent release. x x x For DWIKARNA had already been charged by the BI for violation of the Philippine Immigration Act of 1940, as amended.

Once a person detained is duly charged in court, he may no longer question his detention through a petition for issuance of a writ of *habeas corpus*. His remedy would be to quash the information and/or the warrant of arrest duly issued. The writ of *habeas corpus* should not be allowed after the party sought to be released had been charged before any court. The term 'court' includes quasi-judicial bodies like the Deportation Board of the Bureau of Immigration. (Rodriquez v. Bonifacio, 344 SCRA 524, 541 [2000], Underscoring supplied).<sup>[7]</sup>

On April 30, 2002, petitioner moved for the dismissal of the amended charge sheet in D.C. No. ADD No. 02-004. On May 8, 2002, he filed a motion for the early resolution of the case. Both motions are still pending resolution by the Board of