

51/86

SUPREME COURT OF VICTORIA

Re SINGH

Kaye J

18 July 1984

BAIL – ILLEGAL IMMIGRANT – DEPORTATION ORDER MADE – IMMIGRANT HELD PENDING DEPORTATION – WHETHER JURISDICTION TO GRANT BAIL: *MIGRATION ACT 1958 (CTH)*, SS20, 38, 39.

1. In order for a State court to exercise power of granting bail in respect of a Commonwealth Act, it must be expressly granted to the Court.

2. As the *Migration Act 1958 (Cth.)* does not empower a Court to grant bail to a person awaiting deportation, and the *Bail Act (Vic.)* has no application, a Court has no power to grant bail where a person is being held under the provisions of the *Migration Act (Cth.)*.

Re Groves (1973) Qd R 310; 22 FLR 280, followed.

KAYE J: [1] Ranjit Singh is present in court in response to a Writ of *Habeas Corpus* which I ordered to issue against the Officer-in-Charge of the lock-up, Midway Migrant Centre, Maribyrnong yesterday afternoon. On the 18th April 1984 he was arrested as a prohibited non-citizen. On the 7th June 1984 an order was made for his deportation. The validity of the order is not challenged. What is said on behalf of the applicant by Mr Little is that the applicant is being unlawfully held in that the deportation order having been made the applicant has been detained whilst inquiries are being made concerning him and concerning his further stay which inquiries ought to have been made by the Minister under the provisions of s38(3) of the *Migration Act 1958 (Cth.)* before making the deportation order. It is said that the order having been made and there having been delays since then in the execution of it, [2] therefore, the applicant is not liable to be kept in custody.

Section 39(1) provides that where an order for the deportation of a person is in force, an officer may without warrant arrest a person whom he reasonably supposes to be that person, and by sub-s6 a deportee may be kept in custody as the Minister or an officer directs pending deportation until he is placed on board a vessel for deportation. The power given to the Minister to make a deportation order is provided by s18 of the Act in these terms:

"The Minister may order the deportation of a person who is a prohibited non-citizen under any provision of this Act."

I pause here to observe that the order for the applicant's deportation was clearly made under that power. Under s20 it is provided:

"Where the Minister has made an order for the deportation of a person, that person shall, until the Minister revokes the order, be deported accordingly."

[3] By sub-s2, which was introduced by Act No. 112 of 1983 which came into operation on 2nd April 1984, it is provided that the validity of an order for the deportation of a person shall not be affected by any delay in its execution. In my opinion, that is the clear answer to this application made on behalf of the applicant. He is a deportee who has been held for the purposes of deportation and properly held under the provisions of s39(6). Accordingly, he is not being held illegally.

The second application that is made on behalf of the applicant is that on the assumption that he is being held legally the applicant ought to be admitted to bail. Reliance is placed upon the provisions of s39(7) of the Act which empowers an authorised person at any time to release a person who is in custody as a deportee awaiting deportation. It was contended on behalf of the applicant that by reason of that provision and the provisions of the *Administrative Decisions*

(*Judicial Review*) Act of 1977 (Cth.) this court is empowered to release on bail whilst waiting deportation a deportee.

In my opinion, the Act does not so empower the court. This court has no jurisdiction to admit a person to bail where that person is being held under the *Migration Act*. This court may admit to bail a person where he or she is being held in connection with an offence or a criminal matter or a matter which is within the jurisdiction of this court. Bail is granted by this court either in its inherent jurisdiction or under the provisions of the *Bail Act*. The *Bail Act* has no application to the *Migration Act* and the inherent jurisdiction of the court does not extend to this legislation.

[4] In reaching this conclusion I follow what was said by Campbell J as His Honour then was, in *re Groves* 22 FLR 280; (1973) Qd R 310 at p311. What appears in that passage is apposite to the Supreme Court of Victoria, namely:

"The Act, the *Extradition (Commonwealth Countries) Act* 1966 under consideration is legislation of the Commonwealth Parliament and I consider that the common law inherent jurisdiction of the Supreme Court of Queensland to grant bail does not extend to cases where a person is held in custody under Commonwealth legislation. This court has not been vested with Federal jurisdiction in the matter."

In my view, in order for a State court to exercise the power of granting bail in connection with a Commonwealth Act, it must be expressly granted to the Court. For those reasons the *habeas corpus* writ will be discharged.
