

Badri Prosad Vs. State

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Court : Kolkata

Decided On : Dec-05-1951

Reported in : AIR1953Cal28,56CWN406

Judge : P.B. Mukharji and ;P.N. Mookerjee, JJ.

Acts : Essential Supplies (Temporary Powers) Act, 1946 - Sections 7(2) and 13A; ;Essential Supplies (Temporary Powers) (Amendment) Act - 1950; ;Code of Criminal Procedure (CrPC) - Section 497; ;[General Clauses Act, 1897](#) - Section 26

Appeal No. : Criminal Misc. Case No. 364 of 1951

Appellant : Badri Prosad

Respondent : State

Advocate for Def. : Amaresh Chandra Roy, Adv. and ;Nirmal Kumar Sen, D.L.R.

Advocate for Pet/Ap. : Sudhansu S. Mukherjee, Adv.

Judgement :

P.B. Mukharji, J.

1. This is an application for bail under Section 498, Criminal P. C. The central question in this application is, how far the powers of the Court to grant bail have been cut down by Section 13A, Essential Supplies (Temporary Powers) Act, as

amended.

2. It is necessary to state briefly the relevant facts leading up to this application. The petitioner is an accused charged under Section 7 (2), Essential Supplies Act. The prosecution case, briefly, is that on the morning of 14-10-1951 at about 5/15 A. M. the petitioner was found driving lorry No. CH-1746 containing bags of rice coming along the Grand Trunk Road from Magra side being piloted by another lorry No. CH-519 which was proceeding a little ahead of lorry No. CH-1746. On this lorry No. 1746 was found rice weighing 151 mds. contained in 77 hags. This lorry was being driven by the petitioner and there was another man named Lakshminarayan, who was sitting by the side of the petitioner who was driving the lorry. The prosecution case is that neither the petitioner nor Lakshminarayan could produce any licence or permit. The petitioner was accordingly charged under Section 7 (2), Essential Supplies Act for violation of Rule 10 (1) and 3, Bengal Foodgrains Control Order, 1945.

3. The defence for the petitioner is that he had no guilty knowledge and, in fact, he had no knowledge whatever that there was no requisite permit for these bags of rice. It is his case that he was only the driver of this lorry which was hired by the owner of these bags of rice. In fact before the Sessions Judge at Alipore in his petition for bail he states that he took the lorry to Pandua to collect sand and was waiting on the road when a Bengali business man describing himself as a registered dealer in rice engaged him to carry the rice from Kalna Road to Chanditala and in fact a paper was shown to the petitioner by the owner, which paper was described to be a permit. The petitioner started the lorry from Kalna Road at about 4 A. m. and the lorry was checked at Magra and he states that the permit was shown to the officer and the lorry was allowed to run. Thereafter the lorry was stopped by a police officer and on the sight of the police officer the owner of the rice ran away and the petitioner was apprehended. The petitioner states that having been questioned by the police he stated all these facts before the police and in fact drew their attention to the owner who was still then running. In his petition before us, he has repeated the same facts stating that he had no reason to suspect that the owner of the bags had not the necessary permit or licence. He has also alleged that the owner of the bags was seated on the lorry

and when the vehicle was stopped by the police he made himself scarce in the confusion. In short, the defence is that the petitioner is a mere carrier and he has no guilty knowledge or the necessary mens rea to be charged with any offence under the Statute.

4. The petitioner moved for bail before the Magistrate but his application was rejected. He thereafter moved the Sessions Judge unsuccessfully. On 22-10-1951, the Judge in vacation made an order to the effect that as the bags of rice in question were found in the lorry which was driven by the petitioner there were no reasonable grounds for believing that the petitioner was not guilty in the circumstances. Thereafter on 22-11-1951, he moved also the Sessions Judge when the learned Sessions Judge refused to enlarge him on bail on the ground that there was no reasonable ground for believing that the accused was not guilty in respect of the offence said to have been committed under the Act. The petitioner now moves us for bail.

5. The whole question in this application turns upon the construction of Section 13A, Essential Supplies Act. That section was introduced by Act 62 of 1950. It purports to make special provisions regarding bail of persons, accused or convicted of an offence under 8. 3 of the Act relating to foodgrains and punishable under the proviso to Sub-section (2) of s. 7 of the Act. It will be desirable to state the section at this stage fully. It reads as follows :

'Section 13A. Special Provisions Regarding Bail. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), no person accused or convicted of a contravention of any order under Section 3 relating to food-grains which is punishable under the proviso to Sub-section (2) of Section 7 shall if in custody, be released on bail or on his own bond unless

(a) the prosecution has been given an' opportunity to oppose the application for such release, and

(b) where the prosecution opposes the application it appears to the Court that there are reasonable grounds for believing that he is not guilty of such contravention.'

6. As I read this section, its effect is to fetter and circumscribe the Court's power to grant bail. The Court cannot grant bail in such cases without giving an opportunity to the prosecution to oppose the application. Its first duty, therefore, is to give the prosecution that opportunity. If inspite of this opportunity the prosecution does not oppose, then the further rigours of this section do not operate and the Court is free to decide the question of grant of bail apart from and independently of this section by reason of Section 5 (2), Criminal P. C. But if the prosecution does oppose the application for bail, then comes the second duty of the Court under the section. In that event the Court cannot grant bail unless it appears to the Court that there are reasonable grounds for believing that the applicant for bail is not guilty.

7. At first sight such a provision appears to imply a marked departure from the accepted notions in Criminal Jurisprudence of granting bail. The section expressly begins by saying that its provisions are notwithstanding any thing contained, in the Criminal Procedure Code. The approach, therefore, to the construction of this section should be without the pre-conceived notions inherited under the Criminal Procedure Code. That much is clear.

But on closer reflection the first impression of the section sheds a good deal of its novelty and it does not appear to be such a drastic innovation because the words used in that section have the familiar ring of Section 497, Criminal P. C., which in cases of non-bailable offences uses the expressions 'reasonable grounds for believing that he has been guilty' and 'no reasonable grounds for believing that the accused has committed a non-bailable offence.' Under Section 497, Criminal P. C., therefore, the Court has also to consider reasonable grounds for belief. Here, however, a word of caution is necessary. It is time that there under Section 497, Criminal P. C., what prevents bail is the reasonable ground for believing that the accused is guilty. That in actual practice works more favourably to the accused in the sense that at the early stages, before the regular trial has started, it is easier for the Court without the full materials to say that there are no reasonable grounds for believing that he is guilty and thus admit him to bail. But in a case, however, under Section 13A, Essential Supplies Act, it is the converse and more difficult case of reasonable ground for believing that the applicant for bail is not guilty. It is difficult because in actual practice it is bound to be unfavourable to the applicant

for bail in the sense that at the early stages, before the regular trial has started, it will ordinarily be difficult and may in some cases be impossible for the Court to say without sufficient materials that there are reasonable grounds for believing that he is not guilty. But that is the handicap which the statute has imposed in this case. Its effect is that Section 13A, Essential Supplies Act, represents a new species of non-bailable offence with its own rules for bail and that section, therefore, is an extension of Section 497, Criminal P. C.

At the same time the point remains that the consideration of reasonable grounds for belief at the early stages of a trial is not altogether novel and not unknown in the Criminal Procedure Code. Among the many cogent considerations moving the Court to grant a bail, the nature of the offence with which the accused is charged and the likelihood or otherwise of his being guilty thereunder have always played a relevant part. That is a consideration approved by judicial tradition sanctioned by legislative practice, and justified by common prudence. The reason is clear. Bail in its fundamental concept is a security for the prisoner's appearance to answer the charge at a specified time and place. If that security is given and is regarded as enough and safe he is released pending trial. It is only but natural and relevant therefore for any Court to consider such security in relation to and in the light of the nature of crime charged and the likelihood or otherwise of the guilt of the accused thereunder. That is why different provisions are made and different considerations are applied in granting bails in bailable and non-bailable offences.

8. In weighing the likelihood of the guilt or otherwise of the accused at a stage when he is under trial and when he ordinarily asks for bail, the Court has necessarily to act on a reasonable and intelligent anticipation which ex hypothesi must, to a certain extent, be problematical at that stage because the trial has not run its course so as to enable a conclusive decision on the guilt or innocence of the accused. The test supplied, therefore, by the statute in this context is the reasonable test. The statute requires that there must be reasonable grounds for believing that the accused is not guilty. Each of these words used in this section is important. In the first instance there must be reasonable ground. The Court has to reach that state of belief judicially on reasonable grounds and not unreasonably or arbitrarily. Secondly, what is required by the section is a belief and not a

conclusive decision because that is not possible without the trial. In other words the Court has to believe at least prima facie that the accused is not guilty.

9. Now, in this case before us no evidence has been given as yet. The only material before the Court is that a lorry driver has been charged under Section 7 (2), Essential Supplies Act and it is stated in the charge that the accused lorry driver was carrying out of the cordoned area without permit, certain bags of rice in that particular lorry he happened to be driving at the time of seizure. The main question, therefore, is whether the accused lorry driver had any reason to believe that there was no legal permit for the rice or that he had any knowledge on the point. There cannot be a general rule whether a carrier should or should not know what he carries. It may be said on the one hand that the driver of a hired lorry would not normally know or enquire as to what is being carried inside the lorry by the hirer. On the other hand, it may be said that this, by itself, while may not lead to any reasonable conclusion about the knowledge of the driver, taken with other circumstances, might imply such knowledge. In every case it will be a question of fact. Now the defence of the accused is that the owner of the rice, who was required to have the permit was actually in the lorry but escaped when the police arrived. The lorry itself was a hired one and the driver was not the owner of the lorry. Now these are the only materials before the Court at the present stage.

10. The question, therefore, reduces itself to this that on these materials does it appear to the Court that they provide reasonable grounds for believing that he is not guilty? I do not find anything on the record from which any reasonable ground can be said to exist for believing that the present petitioner had any mens rea. That I consider to be fundamental in case of . an offence charged under the Act. He may be proved to have mens rea after evidence or after the conclusion of the trial but nothing appears on the record at the present stage even to suggest it. There have been a number of decisions of this Court to show that mens rea is essential for an offence under this statute. In the case of Bholaprosad v. The King, 53 Cal. W. n. 300, the learned Chief Justice sitting with Das J., decided this point. In delivering judgment Harries C. J. at page 301 observed:

'In India Courts had held that provisions such as those contained in the Order to which I have referred created an absolute liability and that a servant could be liable although he had no guilty knowledge at all. Their Lordships of the Privy Council, however, in the case of Srinivas Mall v. Emperor (A. I. R. 1947 P. G. 135) held that no conviction for such offences could be sustained without mens rea being established. Their Lordships laid down that unless the statute either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, a defendant (accused) should not be found guilty of an offence under the criminal Law, unless he has a guilty mind.'

This decision is also an authority for the proposition that offences which can be held to be committed without a guilty mind are usually of a comparative minor character but it is to be observed that the breaches of this Control Order involved punishment extending to three years' or even 7 years' rigorous imprisonment. It was, therefore, held that these offences were not minor offences for which a man could be found guilty without having the necessary guilty knowledge. This case was also a case under the Essential Supplies Act. To the same effect are the decisions of this Court in *Md. Azam Khan v. The King*, 52 Cal. W. N. 617, under the Bengal Foodgrains Control Order, 1945 and in *Kedarnath Agarwalla v. State*, 54 Cal. W. N. 829.

11. It has, therefore, to be seen that at this stage when just a charge has been made by the police in a case under the Essential Supplies Act what are the available materials from which the Court has to find reasonable grounds for believing that the accused is not guilty before he can be granted bail. The Court granting bail in these cases, to my mind, can certainly consider the charge made and the attendant facts including such police report which he may consider proper. He is also entitled to look at the facts stated in the petition for bail by the accused. Then again, the statute in this case makes it clear that this restriction on the powers to grant bail will only operate in case where the prosecution opposes the application for bail. That indicates that the Court is also entitled to look into the grounds of opposition made by the prosecution in opposing the bail. These are some of the materials available to the Court to find whether there are reasonable grounds for believing that the accused is not guilty. Unless the Court comes to that

belief the Court cannot, under the Statute grant any bail to the accused.

12. In my view it will be an entirely erroneous approach which misses the effect of the presumption of innocence in favour of the accused. That presumption is a legal presumption and has to be rebutted by some materials or other if its effect is to be denied. It has been argued on behalf of the State that the presumption is only for the trial and not for the purpose of granting or refusing a bail. I am unable to accept this argument. I have always known that the principle of presumption of innocence means that the accused is presumed to be innocent until he is proved to be guilty. That is a pervasive presumption which continues from the very inception of any criminal proceeding until proof is effected under the Indian Evidence Act of his guilt. The stage when the accused is asking for a bail is in my opinion also a stage where the principle of presumption of innocence operates. A Statute can take away such presumption. But that is not the case here. In my judgment Section 13A, Essential Supplies Act, does not have the effect of saying that the accused is presumed to be guilty. The Statute does not take away the presumption. Therefore, that presumption is also a relevant consideration for the Court at this stage in coming to a belief that the accused is not guilty. This presumption of innocence however is not to be confused with the other universal tenet of reasonable doubt in Criminal jurisprudence. The principle of reasonable doubt means that if there is any doubt about the guilt of the accused the benefit of that doubt is given to the accused so that he is acquitted. Here however under Section 13A, Essential Supplies Act, the Court must come to a belief that the accused is not guilty before a bail can be granted, so that if the Court cannot come to that positive belief and that belief is itself in doubt then the condition for granting bail under this section is not satisfied and in that event the bail is refused.

13. It has also been contended before us on: behalf of the petitioner, that there cannot be any question of the accused being guilty before an actual proof under Section 3, Evidence Act. In my opinion this test cannot be applied in the case for granting bail under this statute, and I accept the contention put forward by the state on this point. The Court has to make up its mind and reach that state of belief long before actual proof of guilt is forthcoming. Proof under Section 3, Evidence Act, makes it quite clear that the Court has to consider all the matters before it.

Now the Court cannot consider all the matters before it at this stage for the very simple reason that no evidence has been given. As I have said earlier the Court at this stage can only make a reasonable and intelligent anticipation of the guilt.

14. On behalf of the petitioner it has been argued that the scheme of the Foodgrains Control Order, 1945 provides for different types of licences, as for instance licence for possession or storage and licence to carry. Reference was made in this connection to Clause 4 of the Control Order. It is therefore contended that under Clause 10 (1) of the Foodgrains Control Order this cannot be any offence at all because Clause 10 (1) of the Order must be limited to producer's licence to possess. I am unable to accept this contention. The language of Clause 10 (1) of the Control Order leaves no room for doubt in my mind that it includes also any person other than one holding a licence under the Order, and cannot be limited only. This argument on behalf of the petitioner was made on the basis that the Foodgrains Control Order, 1945, continues as an order under this Act as was decided in *Ramananda Agarwalla v. State*, cri. Misc. No. 185 of 1951; by a Special Bench of this Court presided over by Harries C. J., and Das and Banerjee JJ., D/- 30th May 1951.

15. It is necessary to notice another argument advanced by the petitioner also on the basis of the provisions of the Foodgrains Control Order, 1945, forming part of the Essential Supplies Act. It is attractively presented in the garb of the proposition that when an offence comes under and is punishable under two different sections of the same Act, one more rigorous than the other, the accused can choose under which section he should be proceeded against. It is said that the breach of the provision regarding licence to carry is punishable under Clause 16 of the Control Order and therefore cannot also be punishable under Section 7 (2), Essential Supplies Act.

I am unable to accept that argument, I consider such a view is legally unsound as a general proposition. In my opinion it is open to the prosecution to choose the section under which it wants to proceed against the accused. That option is of the prosecution and not of the accused. Inherent in the idea of prosecution is the prosecutor's right to select the form and manner of prosecution that the law

permits. A statute may put restriction or conditions or prohibition on such right but this statute does not do so here. The mere fact that there is another section under which the accused could also be proceeded against does not take away the right of the prosecution to proceed against the other available section.

The principle, that unless there is anything to the contrary in the Statute under consideration an act which constitutes an offence under two or more enactments then the offender remains liable to be prosecuted and punished under any one of these enactments, is well settled in criminal jurisprudence. Its recognition is explicit in Section 26, General Clauses Act. As a juristic idea the same principle in my judgment applies where the act constitutes an offence under two different sections of the same enactment. To hold otherwise will be to make a difference where none exists on principle or reason. What the law abhors and prohibits is that the accused shall be punished twice for the same offence. But that is an entirely different proposition. No decided case or authority was placed before us on this point. As far as I know there are decisions of this Court on an analogous point where the offence falls under two sections, one requiring sanction and the other not, the prosecution could fall back upon the section not requiring sanction where, in fact, no sanction had been given. The ratio of these decisions is that it is open to the prosecution to choose its course and there is nothing illegal or unjust if the prosecution is competent to bring the offence under the section which does not require sanction, to do so. Reference in this connection also be made to a recent Full Bench decision of this Court in *Dhirendra Nath v. Nurul Huda*, 56 Cal. W. N. 1 (F. B.) and to my judgment in *Pramatha Nath v. State*, : AIR1951 Cal581 .

16. Before I conclude reference is necessary to one other point which arose in the course of the arguments in this case. It is essential in my view to bear in mind that the restrictions in granting bail under Section 13A, Essential Supplies Act apply only in the case of an offence that attracts the proviso to Section 7 (2) of the Act. It is therefore necessary to make it clear and apparent in the charge that it is so before any question of applying Section 134 can arise. It may not be enough to say merely that the accused is charged under Section 7 (2) of the Act because that sub-section describes a , variety of offences not all of which attract Section 13A of the Act. It is the more specific offence under the proviso to Sub-section 2 of

Section 7 in respect of which the special provisions for bail in Section 13A of the Act operate. In this case the proviso is not specifically stated in the charge but the other facts stated in the charge clearly show that the proviso to Section 7 (2) is attracted. Here, therefore, it is a matter of form and not of substance. But having regard to the language of Section 7 (2) describing various offences, this may in some cases be a matter of great substance and not of mere form.

17. The point on which I am convinced that the accused should be granted bail in this case is the point of mens rea. Present materials on record at this stage do not show that the accused had the necessary guilty knowledge or mens rea. On the materials so far appearing on record I am of opinion that there are reasonable grounds for believing that the accused is not guilty within the meaning of Section 13A (b), Essential Supplies Act. This is not, in any way, to indicate that he cannot be found guilty at the trial but this is only to say that it is so at the present moment for the only purpose of deciding the question whether the accused is entitled to bail or not. For that purpose alone I hold that there are reasonable grounds for believing that he is not guilty, and should therefore be granted bail.

18. I, therefore, order and direct that the petitioner be admitted to bail to the satisfaction of the District Magistrate of Hooghly.

P.N. Mookerjee, J.

19. I agree that this application should be allowed and pending trial the petitioner should be released on bail to the satisfaction of the District Magistrate.

20. Two questions really arise for decision at this stage. The first question concerns the true interpretation of Section 13A, Essential Supplies Temporary Powers Act and thus raises an issue of general importance. The second question is more particularly related to the case before us, namely, whether in the circumstances of this case the petitioner is entitled to be admitted to bail under the terms of the said Section 13A and its determination necessarily depends on the facts of this particular case and on the materials before us.

21. In criminal trials applications for bail are a familiar feature. In almost all cases the accused, unless he is singularly helpless or unfortunate --usually applies, shortly after his arrest, for being enlarged on bail, That is generally his first step to regain--may be only temporarily--his lost liberty and the Code of Criminal Procedure which governs all criminal trials in the absence of special provisions excluding its application contains elaborate provisions for the guidance of Courts in the matter of bails. These provisions are to be found in Sections 496-498 and 8. 426 of the Code, the first group of sections applying when the trial pends, the other section dealing with the question of post-conviction bails both before the trial Court and before the Appellate Court: vide *Jairamdas v. Emperor*, A. I. R. 1945 P. C. 94.

22. Bail is in essence a security for appearance or attendance of the accused and its seriousness and importance varies with the character and gravity of the offence with which he is charged. In the Code offences have been classified as 'bailable' and 'non-bailable' and between these two classes a clear distinction has been drawn therein. Bailable offences are to be found in the second Schedule of the Code or in the express provisions of other laws, all other offences being classed as 'non-bailable'. In offences of the former class bail is a matter of right but in the latter class it depends on the Court's discretion and other relevant circumstances including the nature of the offence charged. In bailable offences grant of bail is the inflexible rule, there being no exception provided in the Code. In non-bailable cases also, subject to one specified exception, bail is usually granted unless--and here too there is a statutory exception in favour of grant of bail--the Court feels disinclined to exercise its judicial discretion in favour of the alleged offender. The first specified exception enjoins refusal of bail where there are reasonable grounds for believing that the accused--not being under the age of sixteen years or a woman or a sick or infirm person -- has been guilty of an offence punishable with death or transportation for life. The other statutory exception, above referred to, recommends the grant of bail in all cases where there are no reasonable grounds for believing that the accused has committed a 'non-bailable offence' but that there are sufficient grounds for further enquiry into his alleged guilt.

23. The above in brief outlines is the scheme of the Code in the matter of bail and in that scheme one factor, stands out in bold relief. Reasonable belief in the guilt

or innocence of the accused plays a leading role in the matter of grant or refusal of bail and is often a deciding factor. Under Section 497 (1), reasonable belief in the guilt of the accused when the offence charged is 'non-bailable' and punishable with death or transportation for life disentitles him from getting bail. Under Section 497 (2) which deals with other cases of 'non-bailable offences', reasonable belief in the innocence of the person charged generally determines the question of bail in his favour. Barring these two specified types of cases in all other cases where the offence charged is 'non-bailable' -- be it punishable with death or transportation for life or any other punishment -- the matter of bail is left entirely in the discretion of the Court. These latter include also cases where the Court is unable to form a reasonable belief in the guilt or innocence of the accused, that is, cases where it entertains, at the stage when bail is applied for, reasonable doubt as to both his guilt and innocence and in such cases also the discretion of the Court, though it has to be exercised judicially, is left unfettered by the Code.

24. The Essential Supplies (Temporary Powers) Act by enacting Section 13A has considerably curtailed the Court's power, above outlined, to grant bails where the offence charged is one under Section 7 (2) proviso of the Act. In cases of other offences, though falling under the Act, the Court's power is not affected but if Section 7 (2) proviso covers the case the Court's discretion in the matter of grant of bail becomes greatly circumscribed. It cannot grant bail unless opportunity has been given to the prosecution to oppose the same. It cannot also grant bail, when opposed, unless it has reasonable ground for believing that the accused is 'not guilty'. The changes introduced are thus of a very vital character and the consequences thereof are indeed far-reaching. The section imposes a clear duty on the Court -- before it can order bail -- to , give opportunity to the prosecution to oppose the prayer for bail and only when in spite of soon opportunity the prosecution neglects or fails to oppose the same the Court is free to consider the question of bail in the light of the relevant provisions of the Criminal Procedure Code. When bail is opposed by the prosecution the second restriction on the Court's power is brought into play and the Court cannot grant bail unless it reasonably believes in the innocence of the accused. It follows therefore that if in cases of opposition the Court is unable to form a reasonable belief in the guilt or innocence of the accused bail has to be refused -- in other words, when the

question of bail falls to be considered under Section 13A, Essential Supplies (Temporary Powers) Act benefit of reasonable doubt goes to the prosecution. This is indeed startling and it marks a drastic departure from the Code and as it undoubtedly works to the prejudice of the accused its seriousness cannot be underrated.

In cases, therefore, under Section 7 (2) proviso Essential Supplies (Temporary Powers) Act, the Court has a special responsibility--in regard to both the prosecution and the accused -- and the due discharge of this responsibility is often beset with great difficulties. These difficulties arise primarily because of the stage at which the question of bail generally arises for consideration. At that stage the materials are in most cases hardly sufficient to enable the Court to form easily a reasonable belief either in the guilt or innocence of the accused unless of course the prosecution materials are either very strong or particularly weak and it has to strive hard to make up its mind one way or the other, remembering that its failure in this respect may have the effect of condemning a man--about whose guilt no reasonable ground for belief exists -- to custody. In approaching the question, therefore, the Court has to act with the utmost circumspection and it has to scan and scan with the greatest care -- the available materials -- scanty though they be--in the light of the proper test and against the appropriate background.

25. In matters of bail the test to be applied is the test of belief as opposed to decision or conclusion which marks the end of the trial. The belief should no doubt be reasonable but once that is reached one way or the other that is either with regard to the guilt or the innocence of the accused nothing further is generally required to decide the question of bail.

It is to be remembered also that in this country, as in England, there is the well-known presumption of innocence in favour of the accused in all criminal trials. That presumption is a fundamental and inalienable feature of our criminal jurisprudence and though it can hardly reveal itself in its true form and in the fulness of its glory except when the trial has run its full course and a conclusion in the shape or sense of decision as distinct from belief--has to be reached yet its influence cannot and ought not to be wholly discarded when bail is considered either under the Code or

under the Essential Supplies (Temporary Powers) Act. The basic concept underlying the administration of criminal justice in this country enjoins that the reasonable belief in the guilt or innocence of the accused which largely determines the question of bail would have to be formed against the background of this 'presumption of innocence' whether the case is under the Code or under the Essential Supplies (Temporary Powers) Act and it is only when the belief itself is left in doubt even against the background of this presumption that Section 13A, Essential Supplies (Temporary Powers) Act actually leads to a different result from the Criminal Procedure Code -- the former dictating refusal of bail, the latter favouring grant thereof. The presumption is never wholly out of the picture though its effect varies as it applies to trials or matters of bail or to bail under the Code or under the Essential Supplies (Temporary Powers) Act. On the strength of this presumption, the benefit of doubt goes to the accused whether the matter is one for decision at the end of trial or whether it is one for reasonable belief in the matter of bails under the Code and though the same result does not obtain when Section 13A, Essential Supplies (Temporary Powers) Act invades the picture the presumption still continues to furnish the background against which the entire scene has to be set and seen and reasonable belief in the innocence of the accused has to be formed. To that extent at least, the presumption still applies and it will be wrong to discard it altogether simply because the case is one which attracts Section 13A, Essential Supplies (Temporary Powers) Act. This approach secures harmony between this special statute and the basic principles underlying our criminal jurisprudence and there is no reason why that approach should be forsaken to the grave prejudice of the man in custody who may yet prove his innocence at the trial and get honourably acquitted.

26. In the above light have to be considered the available materials before us. They are, as already stated by my learned brother, the prosecution allegation that the accused was driving the lorry which contained prohibited foodgrains beyond twice the maximum quantity prescribed under the Bengal Foodgrains Control Order without the requisite permit for possession and the accused's version, as given out up till this stage, that he was merely the driver of the lorry which had been hired by an unknown person who escaped as soon as the lorry was apprehended and that he had no knowledge -- and had even no reason to suspect

-- that the said person had not the requisite permit as, in fact, a permit was shown to him by that person when the lorry was loaded and was actually checked and passed as in order at an earlier checking station on the way. This version of the accused in the circumstances and probabilities of this case at the present stage is particularly important in view of the decisions of this Court in the cases of Md. Azam Khan v. The King, 52 Cal. W. n. 617 and Bhola Prosad v. The King, 53 Cal. W. n. 300 to which reference has already been made by my learned brother which lay down that in major offences--and there can be no question that an offence under Section 7 (2), Proviso, Essential Supplies (Temporary Powers) Act is a major offence in the sense in which that expression has been used in those decisions, it being punishable with 'imprisonment for a term which may extend to seven years and to a fine etc.' -- 'mens rea' on the part of the accused is essential and has to be proved by the prosecution before a conviction can be obtained. Those decisions are based on the principle of the Judicial Committee's decision reported in Srinivas Mall v. Emperor, 51 Cal. W. n. 900 (p. c.) and I need only express my respectful concurrence with the same. This aspect of the matter -- namely that mens rea is essential for conviction -- is also a relevant consideration at the present stage when the question of bail requires determination and has to be given its due weight along with the other relevant circumstances in arriving at a decision in the present case.

27. Bearing in mind all that has been said above I have considered carefully the available materials, now before us, and it seems to me that the cumulative effect of these materials in the light of the relevant aspects, tests and considerations against the appropriate background inclines in favour of the accused. I, accordingly, agree with my learned brother that this application for bail ought to be allowed and I concur in the order proposed by him.