

## STATEMENT OF FACTS

1. The Union of Bermuda is a culturally diverse country located in South East Asia. Having gained independence from a long-drawn colonial rule in 1950, the country has a population of about 1.3 billion. Many of its legislations were drafted and put in force during its colonisation and subsequently on gaining independence in the mid 1900's. By subsequent amendments to the Constitution of Bermuda, the country transformed into a Sovereign, Socialist, Secular, Democratic and Republic. The people supporting the majority party are orthodox and cultural activists.
2. With the increase in westernization, the country is facing contemporary issues like high consumption of alcohol, drugs and other such substances by its younger population. Almost all the states of the country are facing the similar issue but the one which is facing it the most is Tamrashtra. Tombay, is the capital city of Tamrashtra and is also known as the financial capital of the Union of Bermuda. Tombay, being close to the sea port and a city where the majority of the rich people including film stars, industrialists, players etc. dwells, is more into the western culture.
3. Union of Bermuda has come up with a law to curb this situation and named it as Narcotics Drugs and Psychotropic Substances Act, 1985 (*herein after NDPS Act*). However, the enactment of this legislation failed to curb the usage of drugs and psychotropic substances in Bermuda, even more so in Tombay, where drug users also held "drug parties".
4. Arnabh Khan, son of one of the country's most famed cine-stars Pharukh Khan, had thrown a lavish party to celebrate his birthday, on 20<sup>th</sup> September, 2021, in a grand cruise ship in one of Tombay's ports. Invitation to the party was restricted to Arnabh's friends only, who are a lot in number, thanks to his father's celebrity status.
5. As the party was going on in full swing, officers of the Narcotics Control Bureau (*herein after NCB*), which is an authority established under the NDPS Act, reached there at 11:00 PM. They claimed to have received a tip-off about there being drugs consumed at the party.
6. Mr. Sakood, the officer-in-charge, busted the party and recovered *hashish, cocaine, marijuana* and other such drugs in heavy quantity from the ship. The NCB booked and arrested several youngsters including Arnabh, under section 8(c), 20(b), 27 and 35 of the NPDS Act.

7. Pharukh is one of the most successful film stars of the Bermuda Bollywood Industry. His fandom reaches beyond not just Tombay or Bermuda but also to foreign nations. The news of his son getting arrested in a drug case spread like wildfire among national media outlets.

8. The NCB instituted proceedings against Arnabh and many others before the Special Court established in Tombay under the NDPS Act, whereby it was alleged that Arnabh and others are habitual drug consumers. The NCB showed the WhatsApp chats of Arnabh where he was chatting with known drug suppliers regarding the supply of cocaine, hashish, marijuana and other drugs. He admitted that he used to take marijuana when he was in England, a country where consuming marijuana is legal. He denied allegations that he had consumed any drug on the cruise and claimed that nothing has been found with him and that it might have been one of the other persons present with him that night.

9. The NCB did not do any medical test during the remand period but admitted in the police report that they did not recover any narcotics on him. However, it was pointed out that Arnabh's close friend Mehraz, who was also there on the cruise, had 100g of cocaine and 25g of marijuana on him.

10. Mr. Sakood, who booked the accused, was getting constant threat calls and was attacked several times during this period. It was also alleged that the officer was corrupt and the arrest of Arnabh was a way to dent the reputation of his father Pharukh.

11. The Special NDPS Court, Tombay, heard the matter and on 15<sup>th</sup> of January, 2022 held both Arnabh as well as Mehraz guilty of consuming narcotics and sentenced them with two years of imprisonment along with a fine of Rs. 15000 and imposed a fine of Rs. 20,000 on all other youngsters present there.

The key note of the judgement was

*“On the face of it, both the accused were indulged in illicit drug activities on a regular basis. The WhatsApp chat of Arnabh and the presence of drugs with Mehraz is also prima facie indication of their constant communications with the drugs peddlers”.*

12. Aggrieved by the decision of the Special NDPS court, the accused filed an appeal against the decision in the High Court challenging the Special Court's judgement on the ground of WhatsApp chats not being “evidence”, in the eyes of law and also sought for bail.

13. The High Court admitted the appeal made by the parties and has posted it for the final hearing on 5<sup>th</sup> of February, 2022. The High Court has identified the following specific issues for determination:

1. *Whether WhatsApp chats constitute “evidence” under law?*
2. *Whether the Special Court was justified in convicting the accused solely based on such evidence?*
3. *Can the judgement of the Special Court be questioned, on the basis that it failed to draw any adverse inference from non-conduction of any medical test on the accused?*

**Notes for Counsel:**

- a. The laws of Bermuda are in *para materia* with the laws of India.
- b. The participants shall strictly adhere to the above-mentioned issues and shall not be allowed to introduce any new issues.
- c. Although it is not necessary that the verbatim of the issues to be followed, however, the very essence and meaning of the issues raised cannot be altered.

**Disclaimer:**

*The Moot Problem is a work of fiction. Names, characters, places and incidents are either products of the authors’ imagination or used fictitiously. Any resemblance to actual events or locales or persons, living or dead, is entirely coincidental. Any resemblance to actual firms, institutions, organizations or any other entities is entirely coincidental and in exercise of the authors’ attempt to further academic research.*