

## STATEMENT OF FACTS

1. Adarsh Prajapati was born in Dubai, holds a US passport and has been a permanent resident of India since 1985. He is a trained economist and is considered to be one of the brightest minds in his profession. After graduating from the Delhi School of Economics, he completed his MBA degree from Harvard University. He returned to India and started his own company in India, 'Future Money', which specialised in 'Industry Finance'. He was the CEO of the company and his close friend, Mohan Chandra was the Vice Chairman and authorised signatory. His company had high profile directors, including the children of several leading politicians, bureaucrats and film stars. Subsequently, Future Money launched an IPO that brought unprecedented capital into his company, and the IPO was oversubscribed over 100 times. At the time, it was one of India's largest IPOs and the media hailed the arrival of a *'truly global Indian giant'*.
2. After a few of these media interviews, Future Money unfortunately went bust in spectacular fashion and the Company ended up with unpaid loans amounting to several hundreds of crores and several thousand shareholders baying for Adarsh Prajapati's blood. Adarsh and Mohan Chand resigned from the Company. The media soon learnt of a *'golden parachute'* deal between Future Money and Adarsh Prajapati, wherein he was paid Rs. 5 Crores upon the termination of his contract with Future Money, which was paid over and above the waiting secured creditors of the company. The case was covered in detail by the media and the case was treated with utmost severity by the Reserve Bank of India, since it discovered that several of its guidelines had been flouted with impunity by public sector banks that had been dazzled by the charm of Adarsh Prajapati and his high profile directors, and had doled out large sums of money to Future Money without securing themselves. The media, stung by the realization of its sheep-like following of Adarsh Prajapati and his company began a systematic campaign to discredit Adarsh Prajapati and to seek his prosecution for his *'deliberate seduction of gullible Indians'*.
3. One of his creditors, M/s Hi Fashion Ltd., filed FIR No. 944A/2004 under Section 420, 406, 467, 471, 120B IPC against *inter alia*, Adarsh Prajapati, which was registered by the EOW cell, Crime Branch, New Delhi on 03.09.2004. Adarsh Prajapati was arrested on 15.09.2004 and was remanded to judicial custody. He was granted regular bail by the Sessions Court vide Order dated 22.09.2004. As a condition of bail, Adarsh Prajapati was required to inform the trial Court of his itinerary every time he proposed to travel out of the country. After registration of chargesheet on 15.11.2004, the trial Court took cognizance and issued summons against Adarsh Prajapati under Section 420, 406, 467, 471, 120B IPC. Charges were framed in April 2005 under Section 420, 467, 471, 120B IPC and recording of prosecution evidence began. In September 2005, Adarsh Prajapati joined Generic Multi National Company [GMNC] as their Vice President [Marketing] with assignments around the world.
4. Adarsh Prajapati is married to Kumari Sukarnaputri, [who has an Indian father and Fraternalian mother] based in Fraternalia since 1980. Fraternalia is a small South East Asian monarchy that bears strong cultural and political ties with India going back centuries. Fraternalia has been governed as a monarchy for over 680 years, and is presently ruled by His Royal Highness Tashanbilli. Fraternalia permits bigamy and grants citizenship to any individual marrying a Fraternalian national. Fraternalia has signed an Extradition Treaty with India, being in *pari materia* with the treaty between India and UAE.
5. Fraternalia's constitution is in *pari materia* with that of India, except that Article 20 and Article 32 of the Indian Constitution are not present in the Fraternalian constitution. Fraternalia is a common law country, being a former British protectorate, and recently adopted the Indian Information Technology Act, 2000 as it stood on the midnight of 04.07.2006. It has also adopted the Indian Citizenship Act and the General Clauses Act.

6. Fraternia has discovered rich oil and uranium deposits that could provide for the energy requirements of the developed world for over 700 years. At present India is the only country whose energy companies have been given exclusive exploration and mining rights of the oil beds in Fraternia and detailed negotiations have been on for the past five years for exclusive exploration and mining rights to be given to India for uranium deposits subject to clearance by the Nuclear Suppliers Group, of which Fraternia is a member.
7. On 12.07.2006, the Fraternal Information Technology Act, 2006 was amended to introduce Section 67A, which read,

*“Section 67A: The display, transmission or publication by any means whatsoever of the image or any likeness of the Monarch on any electronic storage device is deemed to be obscene for the purposes of Section 67, and any such display shall be punishable with death or imprisonment for life and fine”*
8. Section 67A was notified on 13.07.2006 by virtue of its publication in the Royal Gazette of Fraternia on 13.07.2006 and the provision was declared to be in effect from 01.01.2006. Section 2(zz) of the Fraternal Information Technology Act, 2006 defined the term ‘Monarch’ to be the Ruler of Fraternia, which in the present case would be HRH Tashanbilli. In June 2007, GMNC sent Adarsh Prajapati to Fraternia to help develop an advertisement campaign for ‘Fascinating Fraternia!’, to promote tourism in Fraternia. The campaign was partly sponsored by the Ministry of Tourism of the Royal Government of Fraternia. During the course of the project, Adarsh Prajapati sent several presentations by email to his company headquarters in France, with copies sent to his Indian office. These presentations, which were templates for the campaign, contained several morphed pictures of HRH Tashanbilli in shorts and holding a beer mug with a caption ‘Welcome to Fraternia! Cheers!!’ Adarsh Prajapati used a mobile handset for all his communications.
9. After sending the last presentation on 24.08.2008, Adarsh Prajapati left Fraternia to take a well deserved break from work. However, as his flight left Fraternia, Fraternal society was in uproar upon discovery of the first promotional material, which included the images of HRH Tashanbilli, which was shown by GMNC to a test audience in Fraternia. The material was universally reviled and was declared to be ‘obscene beyond redemption’ by the *Fraternal Chronicle of Truth and Justice*, a leading newspaper. Within a week an FIR was registered under local obscenity laws, including Section 67A of the Fraternal Information Technology Act, 2006 at the local constabulary and arrest warrants were issued against the Chairman and Managing Director of GMNC, the CEO of the media division of GMNC and several other officers, including Adarsh Prajapati. By 15.09.2008, all the above accused persons were declared as being absconders and red corner notices were issued against all the accused. After learning that Adarsh Prajapati was in India, HRH Tashanbilli immediately cancelled his intended state visit to India and placed all pending negotiations for uranium exploration and mining with Indian energy companies on hold.
10. About a month after leaving Fraternia, Adarsh Prajapati decided to come to India and was arrested by the Delhi Police at the IGI Airport on 24.09.2008, as per red corner notice issued by Interpol and extradition proceedings under the Extradition Act, 1962 began against him. HRH Tashanbilli continued to issue statements that all trade with India [Fraternia was India’s third largest trading partner] would cease unless the guilty were not brought to book. The Indian Government assured the Monarch that all steps as per law were being taken to ensure that the harmonious relations between the two nations were not jeopardized and in view of the recent concessions made by the NSG, trade between the two countries could now only increase exponentially.
11. At around the same time, prosecution evidence in the case against Adarsh Prajapati was completed and after recording of Section 313 Cr.P.C. statements of Adarsh Prajapati and the fact that no

defence evidence was to be led, the case was listed for final arguments. Continuing their campaign against Adarsh Prajapati, and still smarting after being taken for a ride, the media highlighted the deficiencies in the prosecution, not in the least the fact that 23 out of 25 witnesses turned hostile [the remaining witnesses being the Investigating Officer and a formal witness from Registrar of Companies], and the only evidence in favour of the prosecution were photocopies of certain forged receipts. The prosecution issued a statement that the original and allegedly forged receipts were no longer present on the case file.

12. Since the scandal, Mohan Chandra had been arrested, charged and in February 2008, convicted for the murder of a local moneylender under Section 302/34 IPC and had been sentenced to life imprisonment by the Sessions Court, which sentence was confirmed by the High Court in March 2008. On 20.09.2008, intrepid reporter Ms. A. Goswami, a leading journalist with InYerFaceNews (IYFN) who was associated with several campaigns in the past, reported that the incarcerated Mohan Chandra, under the influence of his newly discovered faith in God, was now willing to give an unconditional confession clearly outlining the manner in which Adarsh Prajapati and Mohan Chandra had conceived and executed a plan to defraud investors through Future Money and further demonstrate how Adarsh Prajapati had in fact made over Rs.100 crores from the entire fraud and had invested almost the entire amount in Indian energy companies that were poised to enter into the uranium mining sector in Fraternia. He further planned to confess to know who tampered with the judicial file under instructions of Adarsh Prajapati, and claimed to be in possession of CDs that showed Adarsh Prajapati's unquestionable guilt in the matter. Ms. Datta also reported that the confession would be made public on 22.09.2008 in a specially called for press conference by Mohan Chandra's brother.
13. On 21.09.2008, newspapers reported that the Union of India had pardoned Mohan Chandra in his murder case, in exchange for his 'co-operation in a case of national importance'. These reports were affirmed by the Ministry of Home Affairs. On 22.09.2008, during the scheduled press conference, Mohan Chandra's brother stated that Mohan Chandra had no statement to give since a condition of his pardon was his complete co-operation with the Government in the extradition case against Adarsh Prajapati. On the same day, the Public Prosecutor moved an application under Section 321 Cr.P.C. before the trial Court and prayed for withdrawal of prosecution against Adarsh Prajapati in case FIR No. 944A/2004. After hearing arguments on the application under Section 321 Cr.P.C., the trial Court passed a detailed order dated 10.10.2008 discharging Adarsh Prajapati on the ground that the Government had withdrawn prosecution against him.
14. On 21.11.2008, counsel for Adarsh Prajapati moved an application under Section 34B of the Extradition Act, 1962, seeking discharge on the ground that the request papers from the Fraternian government had not reached. After recording statement of the counsel for the Union of India that no request papers had been received by the Indian Government, the trial Court discharged Adarsh Prajapati on 21.11.2008.
15. On 24.11.2008, the Govt. of NCT of Delhi filed an Appeal before the High Court against Order dated 10.10.2008 passed by the trial court, stating that the Government had withdrawn the request for withdrawal of prosecution, citing an error of judgment on the part of its Public Prosecutor and that Mohan Chandra had critical evidence to give in this case, which was a case of national importance. The Government also placed additional material on record, including transcripts of CDs showing that Adarsh Prajapati had tampered with the judicial file. These CDs had been handed over by Mohan Chandra, who was unavailable for comment. Notice was issued by the High Court on the Appeal and the matter was fixed for 15.12.2008 for directions. The State also moved an application with the Appeal, seeking warrants to be issued against Adarsh Prajapati, on the basis of the news reports broadcast by IYFN and statement made by Mohan Chandra regarding tampering of the

judicial file. The High Court, while issuing notice in the appeal, also issued non-bailable warrants against Adarsh Prajapati.

16. After his discharge on 21.11.2008, Adarsh Prajapati proceeded to take a vacation and booked a tour with 'Floating Casino', a ship registered in Norway that steamed out of Mumbai and spent five days about 50 nautical miles from the Mumbai coast. On the third day of his vacation on the *Floating Casino*, a helicopter belonging to the Indian Coast Guard landed on the *Floating Casino* and a team of officers from the Delhi Police emerged from the helicopter and effected the arrest of Adarsh Prajapati and after seeking transit remand from the local Magistrate in Mumbai on 27.11.2008, produced him before the High Court, where he was remanded to judicial custody pending the appeal.
17. Adarsh Prajapati immediately filed a Writ Petition under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India challenging his arrest and remand. He also moved an SLP under Article 136 of the Constitution of India challenging Order dated 24.11.2008 passed by the Delhi High Court issuing notice to him on the appeal. Both the SLP and the Writ Petition were clubbed together since they contained similar grounds, including, but not limited to:
  - (a) the prosecution had withdrawn the case against him under Section 321 Cr.P.C., and that he stood discharged vide Order dated 21.11.2008 and hence the continued proceedings against Adarsh Prajapati were bad in law;
  - (b) the entire process was an abuse of the process of law and at any rate there was no evidence against Adarsh Prajapati and hence the proceedings were bad in law;
  - (c) Mohan Chandra was bound by the terms of his pardon, and was not competent to give any evidence against Adarsh Prajapati;
  - (d) the continued trial against Adarsh Prajapati amounted to a review of the Order dated 21.11.2008 and could not be sustained in law;
  - (e) his arrest and consequent remand was illegal;

The Delhi Government filed counter affidavits to the Writ Petition and the SLP, *inter alia* stating that:

- (a) the terms of the pardon granted to Mohan Chandra could not be reviewed by any Court;
  - (b) in any event, the power to pardon Mohan Chandra had been exercised in exchange for 'co-operation in a case of national importance' and such co-operation was continuing and hence his evidence could be looked into by a Court;
  - (c) there was enough evidence to convict Adarsh Prajapati in any event;
  - (d) the powers under Section 321 Cr.P.C. had been wrongly invoked and without application of mind and could be challenged in appeal proceedings;
  - (e) the arrest and subsequent proceedings against Adarsh Prajapati were legal.
18. The Hon'ble Supreme Court has placed the matter for final disposal, and has asked both the parties to reformulate the grounds/issues if they so desire.

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