

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6761 OF 2016

Ashu Dutt ... Petitioner
Vs.
Aneesha Dutt ... Respondent

Mr. Rohaan Cama i/b. Mr. Zaid Ansari for Petitioner.
Mr. Santosh Paul a/w. Mr. Karan Vyas i/b. Mr. S. K. Krishnan for Respondent.

CORAM : R. G. KETKAR, J.
Reserved on : APRIL 11, 2017
Pronounced on: APRIL 24, 2017

P.C. :

Heard Mr. Cama, learned Counsel for petitioner and Mr. Paul, learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 30.04.2016 passed by the learned Judge, Family Court No.7, Mumbai below exhibit-75 in Petition No.D-87 of 2012. By that order, the learned trial Judge rejected the application made by the petitioner seeking permission for his 16 years minor son-Anav for going to U.S.A. for higher studies. The matter was moved for urgent orders on 30.03.2017. By order dated 30.03.2017, after recording statement of the petitioner that he is ready and willing to bear expenses of the education of his son Anav during his stay in U.S.A., notice for final disposal was issued to the respondent, returnable on 07.06.2017. In the meantime, petitioner was given liberty to proceed with complying formalities for securing admission of his son. Matter was moved on 03.04.2017 by the respondent on the ground that though respondent was represented, no notice was given to them before moving this Court on 30.03.2017. In view thereof, the matter was listed

on 11.04.2017 and the statement of the petitioner that he will not claim any equity in bearing expenses of education of his son Anav during his stay in U.S.A. was recorded.

3. Rule. Mr. Paul waives service for respondent. In view of the order dated 30.03.2017 as also having regard to the nature of the controversy and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for hearing. Accordingly, the matter was heard at length on 11.04.2017 in the morning session. I have also interviewed Anav and interacted with his parents and Advocates during lunch recess between 2.30 p.m. and 4.00 p.m.

4. In support of this Petition, Mr. Cama submitted that Anav is born on 22.07.2000. He will be completing 17 years on 22.07.2017. He is a U.S.A. Citizen. In U.S.A., person aged 16 years is treated as major / adult. He is entitled to drive vehicle and is also entitled to vote. He submitted that Section 26 of the Hindu Marriage Act, 1955 (for short 'Act') empowers the Court to pass such interim orders, from time to time, with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible. He submitted that respondent wife moved this Court by filing Habeas Corpus Petition namely Criminal Writ Petition No.2330 of 2012 on the ground that Anav and his sister Arshiya are in the unlawful custody of the petitioner and third child Ahren is staying with her. This Court disposed of that petition on 22.08.2012. In paragraph 3, this Court recorded that parties have agreed that the three children would stay together with respondent mother during the week from Monday to Friday evening and with the petitioner from Friday evening till Sunday evening. The said arrangement was without prejudice to the rights and

contentions of the parties leaving them to take recourse to the remedy provided under the ordinary law. In paragraph 5, it was noted that the arrangement worked out between the parties during the pendency of Habeas Corpus petition was without prejudice to their rights and contentions and was not an arrangement agreed upon to be continued during the pendency of the proceedings before the Family Court, but only till the Family Court decides the issue with regard to the custody and access one way or the other or modifies the arrangement till such decision is taken after hearing the parties on all aspects of the matter. In paragraph 6, directions were issued for depositing the passports of all the children in the Registry of this Court for so as to ensure that children are not taken away out of country by any party without notice and / or permission of other party. The passports were ordered to remain in the custody of the Registrar (Judicial) until further orders of this Court or order to be passed by the Family Court, if and when occasion arises.

5. On 02.07.2013, Anav went to the paternal grandparents house and informed them that he wants to stay with his father. He submitted that Anav came of his own volition to the petitioner. On the same day, application exhibit-8 was moved in Custody Petition No.D-84 of 2012 before the Family Court praying for conducting the interview of Anav by the learned Presiding Officer in his Chamber. In that application, order dated 22.08.2012 passed by the Division Bench of this Court in Criminal Writ Petition No.2330 of 2012 was referred. The said fact was immediately reported at 5.40 p.m. at Meghwadi Police Station, Mumbai. On 29.07.2013, the learned Judge referred petitioner, respondent and Anav to Psychiatric Department, J.J. Hospital for conducting counseling session and for submitting report as early as possible. He submitted that on 16.08.2013, daughter Arshiya of her own volition came to reside with the petitioner and since then, she is residing with the petitioner.

6. Mr. Cama invited my attention to the order dated 29.05.2014 passed by the learned Judge in an application made by the respondent wife for releasing passport of their son Ahren and seeking permission to take him to Bangkok, Thailand on the ground that her father is suffering from illness. In paragraph 9 of that order, the learned trial Judge noted that two elder children are in the custody of the petitioner and the younger child is in the custody of the respondent. In paragraph 16, clause (iii), the learned trial Judge observed that it is not disputed that one child is in the custody of the respondent and the other two children are in the custody of the petitioner and the learned trial Judge rejected the application.

7. Aggrieved by this decision, respondent instituted Writ Petition No.5195 of 2014. By order dated 18.07.2014, after accepting the undertaking, this Court directed Registrar-Judicial to return the passports and directed that the copy of the undertaking shall be given to the U.S.A. Consulate, who shall ensure that the respondent abides the undertaking given to the Court. Respondent was directed to deposit passports with the Registrar-Judicial after returning to Mumbai on or before 13.08.2014. In paragraph 5 of that order, this Court also noted that two elderly children have already withdrawn themselves from the respondent's custody and are residing with the petitioner. He submitted that aggrieved by this decision, petitioner approached the Apex Court. By order dated 22.07.2014, Apex Court allowed the appeal and set aside the order dated 18.07.2014 passed by this Court. The Apex Court gave liberty to the respondent to travel on her own.

8. He submitted that respondent thereafter filed Civil Application No.1180 of 2015 in Writ Petition No.5195 of 2014. After considering the order dated 18.07.2014 passed by this Court in that Petition as also

order of the Apex Court dated 22.07.2014 in Civil Appeal No.6684 of 2014, this Court rejected the application on 15.06.2015. Aggrieved by that decision, respondent approached the Apex Court. By order dated 25.08.2015, the Apex Court allowed the appeal by observing that pendency of the custody proceedings and the residence of two children in India would constitute the best form of security that could be available to ensure the return of the third child, Ahren and there is no material on record to take the view that the respondent is not a person with the usual maternal instincts that inhere in every mother. Review Petition instituted by the petitioner was dismissed on 29.09.2015.

9. Respondent filed applications exhibits-14 and 15 in the pending custody petition for permitting her to renew the passport of Master Ahren and also for allowing her to taken Ahren to Thailand to interact with her father. By order dated 19.11.2015, the learned trial Judge partly allowed the applications. Petitioner instituted Writ Petition (St.) No.33946 of 2015 in this Court.

10. Mr. Cama submitted that respondent had instituted Contempt Petition No.576 of 2014 alleging breach of order dated 22.08.2012 passed by this Court in Criminal Writ Petition No.2330 of 2012 and the same was disposed of as not pressed and was allowed to be withdrawn on 27.01.2015. Mr. Cama invited my attention to the application exhibit-75 made by the petitioner seeking permission for Anav to pursue his higher studies in U.S.A. and leave for U.S.A. in July, 2016 and for directing Registrar to release Anav's U.S.A. Passport and his Overseas Citizen of India (O.C.I.) Card to enable him to leave for U.S.A. for higher studies in or about July 2016. He submitted that Anav was offered to study in Loomis Chaffee, Windsor, Connecticut, U.S.A. and he was to be in boarding school at Loomis Chaffee and the term was to

begin in August 2016. The said school is a preparatory school founded in 1914. It is among the top 20 schools in U.S.A. The Business Insider has rated the school at No.17 among the 50 most elite boarding schools in U.S.A. The school has one of the highest endowments among U.S.A. Private schools with an Endowment of US \$ 180 million. 86% of the students from the school are admitted to highly competitive colleges in U.S.A. like Cornell and Georgetown University. The notable alumni of the school includes George P. Shultz, Secretary of Connecticut, United States, the Chairman of the New York Times, Henry Kravis, the founder of the US \$ 100 billion KKR, the Hon'ble Henry R. Horsey, Delaware Supreme Court Justice, John D. Rockefeller and Robert Winters, President and CEO of the Prudential Insurance Company of America. He submitted that by communication dated 10.03.2016 even Hebron Academy offered admission to Anav. He has been admitted as an 11th grade boarding student for the year 2016-17 academic year. Hebron Academy has offered financial aid grant to Anav for the year 2016-17 academic year. Hebron Academy will charge incidental personal expenses , namely \$57200 towards boarding tuition and \$25000 towards tuition obligation. Hebron Academy has offered grant of \$32200. He submitted that petitioner has given up his U.S.A. Citizenship.

11. Mr. Cama has invited my attention to the reply dated 29.04.2016 given by the respondent opposing the application made by the petitioner. Mr. Cama submitted that respondent sent emails dated 23.04.2016 to Mr.Erby Mitchell, Attorney General as also to Ms Nancy Cleary of Loomis Chaffee inter alia contending that they are locked in the custody dispute in the Courts in Mumbai, India. It was further set out that Anav cannot be removed from the jurisdiction of the Indian Courts and until custody matters are decided, moving the child to a school in another country is not permitted and is illegal. He submitted that because of

this, Loomis Chaffee school has revoked admission by email dated 29.04.2016. He further submitted that petitioner had filed application exhibit-48 in the pending custody petition for renewal of children's U.S.A.passports as also seeking permission to take Anav and daughter Arshiya to U.S.A.and abroad in general during their Summer vacations between 01.04.2016 and 30.06.2016. By order dated 14.03.2016, the learned trial Judge partly allowed the application and allowed the petitioner to renew the U.S.A. passports of Aanav and Arshiya as also permitted to take them to U.S.A. for two weeks during Summer Vacation. He submitted that impugned order deserves to be set aside thereby allowing the application.

12. On the other hand, Mr. Paul submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India. Petitioner's conduct dis-entitles him from any reliefs from this Court. He invited my attention to paragraphs 3, 5 and 6 of the order dated 22.08.2012 passed by this Court in Criminal Writ Petition No.2330 of 2012. He submitted that paragraph 3 of that order records that parties have agreed that the three children would stay together with the respondent mother during the week from Monday to Friday evening and with the petitioner father from Friday evening till Sunday evening. The arrangement so made is without prejudice to the rights and contentions of the parties. In paragraph 5, this Court made it clear that the arrangement worked out between the parties during the pendency of Habeas Corpus was without prejudice to the rights and contentions and was not an arrangement agreed upon to be continued during the pendency of the proceedings before the Family Court, but only till the Family Court decides the issue with regard to custody and access one way or the other or modifies the present arrangement till such decision is taken after hearing the parties on all aspects of the matter.

13. He submitted that petitioner did not make any application for modification of the arrangement that was agreed upon by the parties. He invited my attention to paragraphs 4, 5 and 6 of the order dated 25.08.2015 passed by the Apex Court in Civil Appeal No.6516 of 2015, which arose out of the order dated 15.06.2015 passed by this Court. He submitted that the Apex Court was of the view that the pendency of the custody proceedings and the residence of two children in India would constitute the best form of security that could be available to ensure the return of the third child, Ahren, if the Apex Court were to allow the prayer of the respondent. It was also made clear that in the event of respondent with her child Ahren does not return in terms of the undertaking to be furnished, the extent of shareholding of the respondent in the companies mentioned in the Report of the Registrar of Companies shall stand forfeited. He submitted that till date, neither by way of interim order nor final order custody of two elder children is given to the petitioner.

14. Mr. Paul has taken me through the affidavit in reply dated 11.07.2016 filed by the respondent to the petition. In particular, in paragraph 5(k) reliance is placed upon the report submitted by Ms Frennie Italia, eminent Child Counselor appointed by the Family Court to highlight the methodology and modus adopted by the petitioner to alienate the children from their mother. The report sets out in meticulous detail, the observations of Ms Italia which clearly showed indoctrination, bad mouthing and poisoning the minds of the young children by the petitioner against their mother. He further submitted that petitioner had filed application exhibit-8 on 03.07.2013 inter alia praying for interviewing Anav by the Presiding Officer in his Chambers. By order dated 29.07.2013, the learned trial Judge referred petitioner, respondent and Anav to Psychiatric Department, J.J. Hospital for

conducting counseling session and for submitting report as early as possible. He submitted that the petitioner did not comply the said order till date. Mr. Paul also invited my attention to the additional affidavit dated 29.03.2017 made by the respondent and in particular paragraphs 11 and 17 thereof. He submitted that the petitioner has paralyzed the entire family Court proceedings for 4 and ½ years by filing false and frivolous applications and making complaints against the Judges of the Family Court. The conduct of the petitioner is vexatious, contumacious and contemptuous in sabotaging hearings before the Court and thereby continue his illegal usurpation of the custody of the two elder children till they are removed from the jurisdiction of the Courts in India or till they attain majority. He submitted that by order dated 05.02.2016, this court directed the Family Court to dispose of the proceedings as expeditiously as possible. Petitioner has not filed written statements in any of the Petitions, namely, (i) D-90 of 2012 (custody petition filed by the respondent); (ii) C-73 of 2013 (maintenance petition filed by the respondent); (iii) A-420 of 2016 (nullity petition filed by the respondent). Even today, petitioner has not filed written statement to any of the Petitions. He invited my attention to paragraph 5 of the application dated 08.03.2016 made by the petitioner for renewal of children's U.S.A.Passports as sole parent. In paragraph 5, it is asserted that two children being U.S.A. citizens will be going to pursue further studies in the U.S.A. in the next year or two. That they need to travel to the U.S.A. for seeking U.S.A. colleges and abroad for a vacation. The older son is eligible to enroll in a college and prep school for his further studies. He has excelled in studies and is desirous of pursuing his further studies in the U.S.A. He submitted that petitioner is relying upon communication dated 10.03.2016 issued by Joseph M. Hemmings, Assistant Head of School for Enrollment Services, Hebron Academy offering Anav admission to Hebron Academy. It sets out that Anav has

been admitted as an eleventh grade boarding student for the year 2016-2017 academic year. In other words, though in paragraph 5 of the application dated 08.03.2016, it is asserted that two elder children will be pursuing further studies in the U.S.A. in the next year or two, within two days he manipulated to get communication dated 10.03.2016 from Hebron Academy.

15. Mr. Paul relied upon the following decisions:

a. ***Gaurav Nagpal Vs. Sumedha Nagpal, (2009) 1 SCC 42***, and in particular paragraphs 31, 32 and 52; and

b. ***Vivek Singh Vs. Romani Singh, (2017) 3 SCC 231***, and in particular paragraphs 11, 18 and 19 to contend that welfare of child is a prime consideration. Welfare comprehends optimal growth and development of personality of child. Optimal growth also serves larger public interest of national development as children are future of nation. When child is at stage of major shift in thinking process and shaping of an individual personality, deeper level of emotional care is needed for his / her mental stability and maturity. Psychologically, child-mother bonding is regarded as best for child's wholesome development though this presumption is rebuttable. Right of child is based on individual dignity. Since as a result of separation of parents, child falls in middle of contest of loyalty (Parental Alienation Syndrome) which has deleterious effects (psychological and even to some extent physical), intent of court should be to circumvent such effects.

16. Mr. Paul further submitted that Loomis Chaffee is not even amongst the first top 50 boarding schools in U.S.A. In any case, in view of revocation of admission by email dated 29.04.2016 by Loomis Chaffee, the application made by the petitioner is rendered infructuous. He, therefore, submitted that no case is made out for invocation of

powers under Article 227 of the Constitution of India.

17. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. I have heard this matter in the morning session and interviewed Anav as also interacted with his parents and their Advocates between 2.30 p.m. and 4.00 p.m. During the course of interaction with Anav, I found him to be extremely bright and intelligent boy. He took up diverse internships for the past 6 years. He did following internships:

a. as Assistant to Teacher, Bloomingdales School, Bhopal, India in Summer of 2010. He assisted the teacher with receiving the children, helping them complete their assignments and with the class. He learnt patience in dealing with small children and that lesson helped him immensely over the years;

b. as Assistant Coach, Little League India, Mumbai in Summer of 2011. Little League India is a sports league for children from 5-12 years of age. Being an avid baseball and soccer fan, he was assisting the coach with fixing game schedules, doing pre-game preparation, helping maintain rosters, carrying out practice sessions, etc. He worked with the Coach on training techniques, nuances of the game and the discipline required to pursue a sport, which helped him find a place in a number of school teams;

c. As Intern, Explore Broadcasting, Mumbai, India in Summer of 2012. Explore Broadcasting was India's first travel channel. It covered the world's travel destinations and he got opportunity to work on various aspects of programming including editing, production, script writing, etc.

d. As Intern, Narmada Fracture & Trauma Care Hospital, Bhopal, India in Summer of 2013. The said hospital deals with acute Trauma care cases from road accidents. India has one of the highest

incidents of road accident deaths due to delayed medical care. At the hospital, he experienced first-hand, how trauma care hospitals bring together multiple disciplines of medical care to save a patient. It was a humbling experience to see how precious life is and how little people think about it on a daily basis;

d. As Intern, Investment Bank, Northbridge Capital, Mumbai, India in Summer of 2014. It is one of India's most sophisticated M&A Investment Banks. They specialize in Inbound M&As in Pharmaceuticals and Financial Services. He got to assist in research, preparing pitch books, sit in negotiations and see how deals were struck and how companies are valued. It gave him a first-hand view of how deal makers put together very large deals and how they focus on the big picture;

e. As Intern, Indian School League, Mumbai, India in Summer of 2015. The said league is a new sport league to identify potential professional talent for sport early in the life cycle. He used to help the team to put together rules for the league, identify schools that will join the league, create divisions and rules for team elevation. He gained invaluable experience in how a sports franchises is set up and how sports leagues are put together;

f. As Intern, Indian College League, Mumbai, India in Summer of 2016. Based on his work as an Intern, at the Indian School League, he was offered an internship at the Indian College League. The Indian College League is an extension of the Indian School League concept and seeks to identify professional talent in soccer, cricket, baseball, etc. across India's 27,000 colleges. He worked on research of various college sports and professional sport franchise models across the world and drawing roadmaps in rolling out the franchise;

g. As Intern, Bloomberg TV between 01.05.2016 and 15.06.2016. Bloomberg TV is the world's premier financial news

source. 24 hour financial news was one of the most exciting internships he ever did. He worked on preparing research for anchors, writing program flows for shows and doing research on Bloomberg terminals;

h. Intern, World Cricket Council between 15.06.2016 and 15.07.2016. He worked in the President's office preparing a blue print for a new governing body for cricket to reflect the new emerging markets and viewers and to challenge the legacy of governing bodies set up in colonial times. He got the internship based on his paper "Rules of the Game" in which he showed how sports are controlled by sporting bodies set up during a colonial period and how this has to change to reflect the new world order and viewer profile.

18. Anav is also avid sports-person. He has taken part in multiple sports, such as Tennis, School Team for the years 2013-14, 2014-15, 2015-16; Baseball, School Team for the years 2012-13, 2013-14, 2014-15, 2015-16, State Team for the year 2014-15; Softball, School Team for the years 2012-13, 2013-14, 2014-15, 2015-16, State Team, 2014-15; Soccer, School Team, 2015-16, 2016-17; Karate, Brown Belt, 2006-2015; Cricket, School Team, 2014-15, 2015-16, 2016-17. Anav has also co-authored books with his father (petitioner herein), namely, NITI-Timeless Indian Wisdom Lessons on Business, Success, Wealth & Power; The Art of Trading Futures & Options; The Art of Trading in Asia; The Art of Commodity Trading and one yet to be published book. He was also a Research Assistant in respect of books namely, The Art of Asian M & As, The Art of Asian Wealth Management, The Art of Commodities Trading. He has also engaged himself in research papers for (i) Asian Institute of Finance, (ii) World Cricket Council, (iii) School, and (iv) Asian Institute of Finance. He has also participated in a couple of debates and M United Nations in order to help him get over the fear and is also part of school engaged in community service.

19. While interviewing Anav, I found that he was deeply hurt by respondent's email dated 29.04.2016 because of which his admission to Loomis Chaffee is cancelled. He submitted that he had studied hard and prepared himself for getting admission to Loomis Chaffee, which is a preparatory school having overall ranking of 17. On the condition that I should not disclose to the respondent, he informed me that he has been offered admission as a boarding student in class of 2019 in another school, which is one amongst top 10 schools. I have refrained from mentioning the said school in this order. He will have to join the said school in August 2017. The said school is highly competitive with 16% admit rate. Around 2000 students apply every year for admission. The said school is having higher ranking than Loomis Chaffee. There are 150 faculties and the school alumni include Olympiads and Noble Prize Winners. The school prepares students for Yale University. The school has 43% diverse student body and campus is about 800 acres. The school has 100% college matriculation rate and among the classes of 2011-14, 33 enrolled at Yale, 19 at Harvard and 16 at Princeton. It has several interscholastic sports team. The school also offers several clubs and has athlete facilities. He stated that he is presently studying in Jamnabai Narsee School, Mumbai. In the last 50 years, only two students were admitted in Yale University. He stated that if he is permitted to study in U.S.A., he will come to India in every spring break, Christmas Vacation and Summer Vacation.

20. Section 26 of the Act reads thus,

“26. Custody of children.-- In any proceeding under this Act, the court may, from time to time, **pass such interim orders** and make such provisions in the decree as it may deem just and proper **with respect to** the custody, maintenance and **education of minor children, consistently with their wishes, wherever possible,** and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the

custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:

(emphasis supplied)”

21. A perusal of Section 26 shows that Court is empowered to pass from time to time such interim orders with respect to education of minor children consistently with their wishes, wherever possible. At present, Anav is 16 years old and is completing 17 years in July 2017. He wishes to join a preparatory school so as to secure admission in the Ivy League, namely, Yale University, Harvard and Princeton. He is a U.S.A. Citizen and Mr. Cama submitted that in U.S., 16 years person is treated as a major / adult. He can drive vehicle and he can also vote. A perusal of the reply filed by the respondent as also submissions advanced by her clearly shows that she has grievances against the petitioner. Mr. Paul submitted that petitioner has abducted two elderly children and his actions are contrary to order dated 22.08.2012. Even if I accept his submissions, during the course of arguments, he was not in a position to show single fault of Anav. He could not show any blameworthy conduct of Anav. During the course of interaction with the respondent, she also reiterated that petitioner abducted Anav in July 2013 and subsequently in August 2013 daughter Arshiya. Since 2013, she is deprived of their custody, which is contrary to the agreed arrangement recorded in the order dated 22.08.2012. She submitted that if Anav is permitted to study in U.S., she will be deprived of his custody permanently. During the course of interaction, I tried to impress upon her by saying that even if I reject the application, shortly, Anav will turn 18 and in that situation, nobody will be in a position to oppose his wishes for studying abroad. Not only that, I tried to impress upon her by saying that even petitioner will be losing custody of Anav if he is sent to

U.S.A. for future studies. Respondent however was unmoved.

22. Mr. Paul relied upon the decision of the Apex Court in **Vivek Singh's case** (*supra*). In that case, the Apex Court has also referred to the decision in Gaurav Nagpal (*supra*). In paragraph 14 thereof, reference is made to the decision in **Rosy Jacob Vs. Jacob A. Chakramakkal, (1973) 1 SCC 840** and reproduced paragraph 15 of **Rosy Jacob** (*supra*). Paragraph 14 reads thus,

“15....The children are not mere chattels: nor are they mere play-things for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society...”

23. Paragraph 15 of **Vivek Singh** (*supra*) reads thus,

“15. It hardly needs to be emphasised that a proper education encompassing skill development, recreation and cultural activities has a positive impact on the child. The children are the most important human resources whose development has a direct impact on the development of the nation, for the child of today with suitable health, sound education and constructive environment is the productive key member of the society. The present of the child links to the future of the nation, and while the children are the treasures of their parents, they are the assets who will be responsible for governing the nation. The tools of education, environment, skill and health shape the child thereby moulding the nation with the child equipped to play his part in the different spheres aiding the public and contributing to economic progression. The growth and advancement of the child with the personal interest is accompanied by a significant public interest, which arises because of the crucial role they play in nation building.”

24. A perusal of the impugned order also shows that in paragraph 9, the learned trial Judge also observed that child Ahren is a 16 years old and is a very bright student. In paragraph 10, the learned trial Judge noted that his custody with the petitioner father cannot be construed as a custody given in accordance with law as petitioner husband did not take

any permission for retention of his custody. In view of the order dated 22.08.2012 passed by this Court in Habeas Corpus Petition, custody of the child has to be with mother during the week between Monday to Friday evening and with the father from Friday evening till Sunday evening. The learned trial Judge rejected the application by observing that petitioner father did not come before the Court with clean hands and he is taking benefit of his own wrong. The learned trial Judge however failed to appreciate that no wrong is committed by Anav and consequently, he is also not beneficiary of his own wrong. Mr. Paul submitted that Petition is rendered infructuous as Loomis Chaffee has cancelled the admission. As noted earlier, Anav is offered admission in another school. In view thereof and for the reasons indicated hereinabove, I do not find any merit in this submission.

25. It need not be over-emphasized that Anav will get huge and better exposure if he studies in U.S.A as his chances in securing admission in Ivy League namely, Yale, Harvard and Princeton University will be far more than his studying in India. It will also help him in developing his personality. In the light of Section 26 of the Act, I have ascertained his wishes and he emphatically stated that he is keen to study in U.S.A.

26. In the light of the aforesaid discussion, the impugned order cannot be sustained and as such is liable to be set aside. Writ Petition is disposed of in the following terms:

a. Anav, presently 16 years, is allowed to pursue his higher studies in U.S.A. and leave for U.S.A. in July / August 2017. Petitioner shall bear all the expenses of Anav during his stay in U.S.A. and will not claim any equity in that regard;

b. The Registrar of this Court is directed to release Anav's Passports and his O.C.I. Card to enable him to leave for higher studies in

or about July / August 2017;

c. Respondent is restrained from interfering with Anav's education and from contacting the schools without prior permission from the Family Court;

d. Application exhibit-75 stands allowed in the aforesaid terms;

e. Rule is made absolute accordingly with no order as to costs.

27. At this stage, Mr. Rebello orally applies for stay of this order for a period of two weeks from today. He assures that respondent will not seek extension of interim order. Mr. Cama opposes the oral application.

28. Having regard to the fact that the respondent intends to challenge this order before the higher Court, the request made by Mr. Rebello is reasonable. In view thereof, Registrar of this Court shall not release Anav's Passports and his O.C.I. Card for a period of two weeks from today in terms of Clause 26(b). It is expressly made clear that no request for further extension of this interim order shall be entertained.

(R. G. KETKAR, J.)

Minal Parab