

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1335 OF 2018

Anusaya Vishwas Pawashe	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

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Ms Preeti Walimbe for the Petitioner.
Mr. Ujwal Agandh Surve for the Respondent No.3.
Ms M.H. Mhatre, APP for the Respondent No.1-State.

**CORAM : S.C. DHARMADHIKARI AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 25th APRIL, 2018.

P.C.:-

The Petitioner seeks writ of habeas corpus directing the second respondent to produce the minor child before this court.

2. On the earlier occasion after hearing both sides this Court passed a detailed order i.e. on 28.3.2018. All the contentions of both the sides were recorded. We directed the Respondent No.3 to file an affidavit and which affidavit is now filed.

3. We do not express any opinion on the legality or validity of the deed of adoption based on which custody of the child is claimed by

the Respondent No.3 and his wife. We have ensured that the Petitioner's interest is protected in the sense that the child has been admitted in a school and secondly sum of Rs.5,50,000/- is deposited in a fixed deposit with a Nationalised Bank. That amount will not be touched nor withdrawn and the interest generated from the deposit would be utilised only for the welfare and maintenance of the minor and his education.

4. Such an affidavit of the Respondent No.3 and the statement thereof particularly in paragraphs 2 to 4 are accepted as undertaking to this Court. An additional affidavit is filed by the Petitioner today controverting the factual position and particularly the execution of the deed of adoption.

5. We express no opinion on this deed of adoption and and if it is challenged in a competent court with appropriate declaration, if claimed by the Petitioner, that Court will adjudicate the issue on merits irrespective of the filing and disposal of this habeas corpus petition. All contentions in relation to legality and validity of this deed of adoption relied upon by the third Respondent are kept open. The Petitioner's contentions with regard thereto are also kept open.

6. Presently it is stated that the Petitioner, as also the third Respondent and his wife together with the minor child are residing in the same building. Mr. Agandh Surve, the learned counsel appearing for the third Respondent makes a statement that in the event minor child-Sarthak desires to visit and go to the Petitioner and spend time with her, the Respondent No.3 and his wife so also their family members would have no objection to such access of the child by the Petitioner. She can take him to her flat/house as well.

7. We accept this statement as well as an undertaking to this Court. We hope and trust wiser counsel will prevail and the respective parties will give up fight and disputes over a minor child. The child is not a chattel and should not be used to settle some private scores and disputes.

8. The Writ Petition stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.) (S.C. DHARMADHIKARI, J.)