

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.846 OF 2022

Petitioners : 1. Rithika w/o Manish Agrawal,
Aged about 32 Years, Occupation : Housewife.
2. Manish s/o Venugopal Agrawal,
Aged about 34 Years, Occupation : Business
Both the petitioners are r/o House No.
8-1007/1A, Humnabad Base Road,
Behind Biyani Complex, Ayyarwadi, Gulbarga,
Karnataka - 585104

– Versus –

Respondents : 1. The State of Maharashtra,
through Police Station Officer,
Ajni Police Station, Nagpur,
Tah. & Dist. Nagpur.
2. The Child Welfare Committee, Nagpur,
Patankar Square, Nagpur,
through it's Chairman.
3. Shri Shradhanand Anathalaya, Plot
No.123, Abhyankar Nagar Road,
Opp. Punjab National Bank,
Shradhanand Peth, Nagpur – 410 022,
through its President – G.K. Buty.
4. Sonu w/o Nitin Bandhbuche @ Sonu
d/o Bhaurao Tijare,
Aged about : 29 Years, Occupation : Nil,
R/o Sasegaon, Post Malni, Tahsil Kuhi,
District Nagpur (Rural).

=====

Shri Atul Pande, Advocate for the Petitioners.
Mrs. Ketki Joshi, A.P.P. for Respondent Nos.1 & 2.
Shri Mayank Agnihotri, Advocate for Respondent No.3.
Shri N.B. Kalwaghe, Advocate for Respondent No.4.

=====

CORAM : **SUNIL B. SHUKRE AND M.W. CHANDWANI, JJ.**
DATE : **12th DECEMBER, 2022.**

ORAL JUDGMENT : *(Per Sunil B. Shukre, J.)*

Rule. Rule made returnable forthwith. Heard finally by consent.

02] This petition seeks writ of *Habeas Corpus*, which, in the facts and circumstances of the case, cannot be issued by this Court. The child in question has been kept in the custody and care of respondent No.3 in pursuance of the order passed by the Child Welfare Committee on 29/11/2022 and, therefore, it cannot be said that any custody of the child in question held by respondent No.3 is unlawful and illegal requiring interference by this Court by issuing writ of *Habeas Corpus*. The prayer made in this regard, therefore, cannot be granted.

03] As regards the amended prayer for setting aside the order dated 29/11/2022 passed by the Child Welfare Committee also, we find that there being alternate remedy available to the petitioners for challenging the validity or otherwise of the order, we would not like to entertain this petition unless the statutory remedy of appeal available under the Juvenile Justice (Care and Protection of Children) Act, 2015

(hereinafter referred to as “Act” for short), is being availed of. At this stage, the learned Counsel for the petitioners submits that the petitioners are prepared to file the appeal as contemplated under Section 101 of the Act, provided the appeal is directed to be decided as early as possible and in a time bound manner and that during pendency of the appeal, the petitioners are given regular access to the child in question. The learned Counsel for respondent No.3 has no objection, if such access is provided subject to some conditions and under overall supervision and control of respondent No.3. The learned Counsel for the biological mother i.e. respondent No.4 has also no objection to providing of access contending that the child in question has already been voluntarily given in adoption by respondent No.4 to the petitioners and now it is only the petitioners, who are the real parents of the child in question. Of course, the learned A.P.P. submits that whether the child has been given in adoption voluntarily or not is a question, which would have to be decided appropriately on the basis of material available on record by the Children Court under Section 101 of the Act and much would depend upon the purpose for which alleged adoption has taken place. But, she would not have any objection in giving access to the petitioners to the child in question subject to appropriate conditions.

04] Accordingly, we relegate the petitioners to remedy of appeal under Section 101 of the Act by giving liberty to file an appeal. We direct that if any such appeal is filed, the same shall be decided by the concerned Children Court in accordance with law by giving appropriate opportunity of hearing to the petitioners and also all the stakeholders including the police as early as possible and in any case within ten days of filing of the appeal. We direct the parties to cooperate with the Children Court for deciding the appeal within the time period set by this Court under this order. We also direct the Investigating Officer to place on record the material collected by him during the course of investigation, so that appropriate decision can be taken by the Children Court.

05] Meanwhile, we allow access of the petitioners to the child in question at Shradhanand Anathalaya i.e respondent No.3 everyday starting from 13/12/2022 in between 12:00 p.m. and 3:00 p.m. till final disposal of the appeal under Section 101 of the Act subject to the following conditions.

- i. The access of the petitioners to the child in question is permitted under the supervision and control of any responsible employee of respondent No.3.

- ii. The petitioners shall not take the child in question out of the premises of respondent No.3.
- iii. The petitioners shall not bring with them any homemade food and shall not provide any articles or any homemade food to the child in question, except for the toys declared to be safe for children of the age of the child in question under the law.
- iv. The petition is partly allowed in terms of the aforestated order and to that extent the rule is made absolute.

(M.W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)

**sandesh*