

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 829 OF 2023

Aniket Sanju Kamble
adult, Indian Inhabitant of Bombay,
aged about 23 years, Occupation: Service,
residing at Jai Hanuman Society, 7th Floor,
Room No.706, Bhujbalwadi, Mali Samaj,
Govandi, Mumbai-400 043

... Petitioner

Versus

1. State of Maharashtra,
N.M. Joshi Marg Police Station,
Sakhubai Mohite Marg, NM Joshi Marg,
Lower Parel, Mumbai-400 013
(represented by the Public Prosecutor)
2. Child Welfare Committee,
Mumbai City-II,
David Sasoon School, Takandas Kataria Marg,
Mahalaxmi Sindhi Colony, Matunga West,
Mumbai- 400 016.
3. Bal Asha Trust,
a trust having its office at
Anand Niketan, KGVM,
Dr. Elijha Moses Road
Mahalaxmi, Mumbai- 400 011.
4. Nitin Nanubhai Kamdar,
adult, Indian Inhabitant of Bombay,
aged about 49 years, Occupation:Business,
residing at Harharwala Builing no.12,
Rook No.68/3, N.M. Joshi Marg, 347/A,
Opposite Podar Mill, Jacob Circle,
Mumbai- 400 011.

... Respondents

Mr. Ashok Pande a/w Mr. Anand Pande, Ms. Pooja Pandey,
Mr. Shohit Shukla and Mr. Gaurav Pande for the Petitioner.
Ms. S.S. Kaushik, APP for the Respondent–State.
Ms. Ankita Singhania i/by Mr. Saif Dingankar for respondent No.3.
Ms. Ridhima Mangonkar for respondent No.4.

Mr. Mahadev Bhagwan Sawant, Chairperson and Mr. Shyam Ratan
Mestry, Member, CWC-II, Mumbai city, present.
Mr. Gawade, PSI, Mr. Jadhav, PSI, NM Joshi Police Station, present.
Smt. Vaishali Bhakte, Social Worker, Bal Asha Trust, present.

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.**

DATE : MARCH 29, 2023

ORDER (Per : Sharmila U. Deshmukh, J.):

1. By this petition, the Petitioner seeks Writ of Habeas Corpus directing the Respondent Nos.1 to 3 to produce his infant son – Sonu Aniket Kamble and to hand over the infant to the Petitioner.

2. Briefly stated the facts of the case are that Sonu was born to the Petitioner and his wife-Laxmi Malhari Ramgude on 5th August, 2022. It is claimed that on 25th January, 2023, the Petitioner's wife-Laxmi left the matrimonial house leaving behind Petitioner and Sonu. It is claimed that the Petitioner is not aware of her whereabouts. It is the case of the Petitioner that the custody of Sonu was always with

the Petitioner.

3. In the month of February, 2023, Sonu was suffering from high fever, cough and cold, and as the Petitioner was unable to take proper care, the Petitioner left Sonu under the care of his sister at Ghatkopar, who also had a child aged nine months. It is claimed that Sonu as well as the Petitioner's sister's child were unwell and as such the petitioner's sister took help of her friend– Sulochana Nitin Kamdar and requested her to take Sonu to the doctor for checkup. Accordingly, Sulochana Nitin Kamdar took the child for medical checkups to Dr. Nirmal C. Jain. On 17th February, 2023, suddenly, the health of Sonu deteriorated and as the Petitioner's sister was unable to take Sonu to the hospital, considering that her own child could not be left at home alone, she requested Sulochana Kamdar to admit Sonu to the hospital.

4. It is claimed that the husband of Sulochana Nitin Kamdar got Sonu admitted to Baijerbai Wadia Hospital. During the admission process, Nitin Kamdar gave his own name as the father of the child, as he was not aware of the full name of the Petitioner. Thereafter, the Petitioner was taking care of Sonu during the hospital stay. At the time of discharge, the in charge doctor inquired with the Petitioner about the name of Sonu's father. The Petitioner informed the doctor that he was the father of the child and as such doctor found

discrepancy in the information given in the admission form and asked the Petitioner to submit documents to show that the Petitioner had authorized Nitin Kamdar to get Sonu admitted in the hospital.

5. In such circumstances, the Petitioner and Nitin Kamdar approached an Advocate and instructed him to prepare necessary legal documents. The Advocate instead of preparing the authority letter, prepared an adoption deed, which came to be submitted to the hospital. The hospital authorities suspected foul play and informed the police, who apprised the Respondent no.2 i.e. Child Welfare Committee, who took the custody of Sonu and entrusted the child to Respondent No.3- Baal Asha Trust for proper care.

6. Heard Mr.Ashok Pande, learned counsel appearing for the Petitioner, Ms.S.S. Kaushik, APP appearing for Respondent–State, Ms. Ankita Singhania, for respondent No.3 and Ms.Ridhima Mangonkar for respondent No.4.

7. Learned counsel appearing for the Petitioner submits that there is no question of giving the child in adoption to Nitin Kamdar and considering that the Petitioner was unable to look after the ailing child, he had left Sonu under the care of his sister. As Sonu was unwell, the Petitioner's sister requested her family friend for assistance to get Sonu admitted to the hospital. He would further submit that neither Nitin Kamdar nor the Petitioner are conversant

with English language and have signed the adoption deed without being aware of its contents.

8. Mr. Pande has invited the attention of this Court to the provisions of Section 32 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, “**the Act of 2015**”) to contend that it is only in cases where the child is abandoned or lost or is an orphan, such a child is required to be handed over to the Respondent No 2 authority.

9. Ms. Kaushik, learned APP appearing for Respondent Nos.1 and 2 submits that the Petitioner has not filed any complaint after the alleged disappearance of his wife. She would further submit that as mis-information was given during the admission of the child in the hospital, Respondent No.2-Committee has taken custody of the child. Ms. Singhania, learned counsel for Respondent No.3 states that she submits to the orders of the Court.

10. Considered the submissions of the parties.

11. It is evident from the aforesaid facts, that the Deed of Adoption was executed under a mis-conception and based on legal advise. The Respondent No.2-Committee has taken custody of the child by virtue of the provisions of Section 32 of the Act of 2015. A plain reading of the Section 32 of Act of 2015 evidences that the said

section was inapplicable in as much as Sonu was neither lost nor abandoned nor an orphan.

12. There is an affidavit-in-reply filed by Respondent No.4- Nitin Kamdar supporting the case of the Petitioner and stating that he has no intention to take the child in adoption and that he has not claimed any right over the child. Nitin Kamdar is present in-person in Court and reiterates the contents of his affidavit. The Petitioner is also present in-person in the Court and has stated that he has not given the child in adoption to Nitin Kamdar.

13. Considering that the Petitioner claims that his wife had left the matrimonial house, we deemed it appropriate to direct the Petitioner to file an Affidavit undertaking that there is no pending litigation between the Petitioner and his wife concerning the matrimonial relationship or child's custody and access. The Petitioner has tendered the Affidavit which is taken on record. The Affidavit undertakes that as and when the Petitioner's wife desires to meet and have access of the minor child, he will provide the access and permit her to meet the child. He has further stated in the affidavit that there is no litigation pending between him and his wife. The statements are accepted as undertaking to this Court.

14. In light of the above, the petition succeeds. The Respondent No.3-Bal Asha Trust is directed to handover the custody

of infant-Sonu to the Petitioner. This Court is informed that an appropriate communication will be addressed by the Respondent No.2 to the Respondent No.3, directing the Respondent no.3 to handover the custody of the child to the Petitioner. The Respondent nos.2 and 3 are directed to handover all the medical papers of the child to the Petitioner.

15. It is made clear that we have not decided the issue about the rights of the Petitioner concerning the custody of the child *vis-a-vis* the rights of the petitioner's wife.

16. Writ Petition stands allowed in the above terms.

17. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.