

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

**INTERIM APPLICATION NO. 3781 OF 2023
IN
WRIT PETITION NO. 97 OF 2021**

Neha Joshi and another

...Applicants

Versus

Abhay S/o Sanjeev Mogal and another

...Respondents

Mr. Kedar Patil a/w Ms. Priyanka Rane-Patil i/b Ms. Darshana Pawar
for the applicants

Mr. Prabhjit Jauhar a/w Mr. Niranjan S. Mundargi, Ms. Keral Mehta
i/b Ms. Jai Vaidya for the Petitioner in 97/2021

Mrs. P. P. Shinde, APP for the State

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 30th OCTOBER 2023

P.C. :

1. Pursuant to the liberty granted by the Hon'ble Supreme Court by order dated 13th October 2023, the respondent (mother of the minor child) in the Writ Petition has filed this application seeking appropriate directions for her travel to the United States of America ('USA') in view of our Judgment and Order dated 14th September 2023 passed in

the Writ Petition.

2. Learned counsel for the applicant, on instructions of the applicant who is present in the Court today, states that as per the applicant's undertaking recorded in our order dated 27th October 2023, she has handed over physical custody of the child to the petitioner (father of the child). He further submitted that all the original necessary medical documents are also handed over to the petitioner. Learned counsel for the petitioner on the instructions of the petitioner who is present in court confirms the same.

3. Learned counsel for the applicant on instructions states that her statement recorded in paragraph 4 of our order dated 27th October 2023 be clarified to mean that the applicant will not create any hurdle or initiate proceedings or take coercive steps against the petitioner for facilitating the smooth travel of the child along with the petitioner to the USA and that the said statement made by the applicant is without prejudice to her rights and contentions. We are informed that the applicant's application for visa is under process and that immediately

upon receiving the required visa, the applicant shall be travelling to the USA.

4. In view of the aforesaid and in view of the fresh affidavit-cum-undertaking dated 26th October 2023 and 27th October 2023 filed by the petitioner, the applicant, without prejudice to her rights and contentions, does not press this application and seeks liberty to take out appropriate application, if any occasion so arises with respect to her visa for travelling to the USA.

5. Learned counsel for the applicant states that in view of the aforesaid statement made by the applicant who is present in the Court today, filing of a separate affidavit-cum-undertaking, as directed by order dated 27th October 2023, be dispensed with, and the aforesaid statement made by the applicant be accepted as an undertaking to this Court.

6. The aforesaid statement made by the applicant stating that without prejudice to her rights and contentions, she will not create any hurdle or initiate any proceedings or take any coercive steps

against the petitioner to enable smooth travel of the child along with the petitioner to the USA, is accepted as an undertaking to this Court. In view of the said statement made by the applicant, we grant leave to the applicant to withdraw this Interim Application with the liberty to file an appropriate application in the event any occasion arises with respect to her visa for travelling to the USA. The learned counsel for the applicant on instructions states that the applicant has no objection if the petitioner takes the child to the USA.

7. The petitioner who is also present before us today, assures to abide by the aforesaid undertakings he filed in this Court.

8. We make it clear that once the applicant arrives in the USA, weekly access as agreed between the parties, as recorded by the petitioner in his affidavit-cum-undertaking will be given to the applicant. Till then, the applicant will be entitled to video access of the child every day between 7.00 p.m. to 8.00 p.m. Indian standard time till the child is in India and after that as per the USA standard time.

9. In view of the aforesaid, the petitioner is entitled to get back his

passport deposited in this Court. The Registrar-Judicial-1 is directed to hand over the original passport of the petitioner during the course of the day. We permit the petitioner/father to take the child to the USA.

10. Except for the aforesaid clarifications, all the directions in our Judgment and Order dated 14th September 2023 passed in the Writ Petition shall remain as it is.

11. The Interim Application is disposed of in the above terms.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.