

*Sharayu Khot.*

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
AND  
IN ITS GENERAL AND INHERENT JURISDICTION  
INDIAN GUARDIANSHIP PETITION NO. 2 of 2023  
WITH  
JUDGE'S ORDER NO. 18 OF 2023

**Mohammed Amin Lakha & Anr.**

**...Petitioners**

***Versus***

**Aamir Hussain Hamidani & Anr.**

**...Respondents**

-----  
Mr. R.K.L. Kapoor for the Petitioners.

Mr. O. Hareendran, Scrutiny Officer present.

Mr. D.S. Gurav, Chamber Registrar present.  
-----

**CORAM : R.I. CHAGLA J**

**DATE : 15 June 2023**

**ORDER :**

1. By this Guardianship Petition, the Petitioners are seeking their appointment as legal Guardian of person of the said male minor Mohammed Umar Aamir Hamidani born on 17th November 2016. Further relief has been sought for dispensation of notice under Section 11 of the Guardians and Wards Act, 1890 as well as relief is

also sought for granting leave to the Petitioners to remove the said minor outside the jurisdiction of this Court and to take the said minor wherever required.

2. The Petitioners are practicing Muslim of sound mind governed by the provisions of the Guardians and Wards Act, 1890. The Petitioners have stated that they have capacity and right to take a male minor in guardianship. The Petitioners have stated that they are at present residing at Jogeshwari, Mumbai – 400 102 and aged about 57 years and 50 years respectively and married for the past 33 years. They have one biological son aged 32 years and only daughter died in the Aftab Building collapse in 2013.

3. Annexed at Exh.A are the proof of age, marriage certificate, medical certificate, death certificate of biological daughter, motivation letter and residence proof. The medical certificate states that the Petitioners are in good health and can take care of the said minor.

4. Said minor is the biological son of the Respondents. The Respondents have three biological children, a daughter aged about

10 years and two sons aged about 8 and 6 years respectively. The said minor is their 3rd child born on 17th November 2016. The said minor's biological father Aamir Hussain Hamidani is younger brother of the 2nd Petitioner Mrs. Saba Amin Lakha.

5. The Petitioners have stated that they have cared for and raised the said minor since his birth. They are deeply attached to the said minor. This appears from the report of Scrutiny Officer Mr. Hareendran, which is taken on record and marked "X" for identification.

6. The said report has referred to the aforementioned facts regarding medical fitness certificate as well as motivation letter of the Petitioners. The 1st Petitioner is self employed (business of dress designing) and his income for the Assessment Year 2021-22 is Rs. 5,99,700/-. There is a Chartered Accountant Certificate, income tax returns at pages 29 to 61 of the Petition. The 2nd Petitioner is a homemaker.

7. The scrutiny Report has also made reference to the home study Report dated 28th November 2022 by the Social Worker Ms.

Clipsy Banji, BA, MSW, PGPDm, which is annexed to the Petition at pages 87 to 93 and Report is found the Petitioners suitable for taking care of the said minor in guardianship.

8. There is a Child Scrutiny undertaking dated 23rd December 2022 annexed to the Petition at 103-104 which is the undertaking of the biological son of the Petitioners' residing with the Petitioners who undertakes to look after the said minor in case of any mishap to the Petitioners.

9. The medical certificate dated 8th September 2022 of the said minor is on record and which certificate found the said minor physically fit and having no history of past illness. The Petitioners have consented to the legal guardianship and undertake to do deeds of things, as it may be necessary in the interest of mental and physical welfare of the said minor.

10. It is relevant to note here that in the case of *Nisha Pradeep Pandya alias Nisha Amit Gor and Anr. Vs. Union of India and Ors.*<sup>1</sup> concerning challenge raised to the Juvenile Justice (Care and

---

<sup>1</sup> Writ Petition No.1085/2023 (Writ Petition (L) No.32065/2022)

Protection of Children) Amendment Act, 2021, the Division Bench of this Court on 10th January, 2023 passed an interim order. The relevant portion of said order of Division Bench reads as follows :

*“8. In the meantime, there will be an ad-interim order only until the next date in terms of prayer clauses (d), (e) and (f) of the petition which reads as follows:*

*(d) Pending the final hearing and disposal of the present Petition, the Hon’ble Court may be pleased to stay the effect, implementation and purport of the letter dated 30th September, 2022 issued by Respondent No.2;*

*(e) Pending the final hearing and disposal of the present Petition, the Hon’ble Court may be pleased to direct the Respondents not to transfer pending adoption matters before the District Magistrates for adjudication.*

*(f) Pending the final hearing and disposal of the present Petition, the Hon’ble Court may be pleased to direct the Hon’ble Courts to continue with the adjudication of the adoption matters that are pending on their record and file.*

*9. Additionally, the safer and more prudent course of action would be to allow all matters to be placed*

*before the learned Single Judge of this Court who is assigned those matters. Those orders may be continued to be passed until the challenge is finally decided.”*

11. The Petitioners have undertaken to deposit an amount of Rs. 1,00,000/- (Rupees One Lakh only) in the name of the said minor in any Nationalised Bank which is also stated in the Judge’s Order which is accepted and signed separately.

12. Having considered the material on record as well as the Scrutiny Report marked X and the averments in the Petition, a case is made out for grant of relief sought for in the Guardianship Petition. Accordingly, the Guardianship Petition is made absolute in terms of prayer clauses (a) to (c) which read thus:-

*“A] That this Hon’ble Court may be pleased to appoint the Petitioners as legal Guardian of person of the said male minor **Mohammed Umar Aamir Hamidani** born on **17th day of November, 2016.***

*B] That the notice under section 11 of the Guardians and Wards Act, 1890 be dispensed with.*

*C] That the Petitioners may be granted leave to remove the said minor outside the jurisdiction of this Hon'ble Court and to take the said minor wherever required."*

13. Judge's Order is accepted and signed separately.
14. The Guardianship Petition is accordingly, disposed of.
15. No order as to costs.

**[R.I. CHAGLA J.]**