

Vina Khadpe

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
FOREIGN ADOPTION PETITION NO. 9 OF 2023
WITH
JUDGE'S ORDER (L) NO. 20293 OF 2023

St. Catherine's Home

...Petitioner

Versus

Johannes Andreams Emanuel Eckerstrom and ...Respondents
anr.

Mr. Rakesh Kapoor i/b. M/s. Rakesh K. L. Kapoor & Co. for the
Petitioner.

Mr. O. Hareendran, Scrutiny Officer, Indian Council of Social Welfare
present.

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

CORAM : R.I. CHAGLA J

DATE : 10 August 2023

ORDER :

1. This Foreign Adoption Petition is filed seeking the
adoption of a male minor Shourya ("**the said male minor**") born on
11th October 2020. The said male minor was found abandoned by
Juhu Police Station, Mumbai on 12th November 2020 and produced

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before the Child Welfare Committee(CWC), Mumbai Suburban District, Borivali on the same day and the said male minor child's safe custody was given to the Petitioner Institution on 12th November 2020 as per the order of the CWC, Mumbai Suburban District dated 12th November 2020 under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Admission Order of the CWC has been placed on record at page No. 18 to the Petition.

2. After making due inquiry under Section 38 of Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), the Child Welfare Committee, Mumbai Suburban District declared the said male minor Shourya "Legally Free for Adoption" on 22nd April 2022. The Free for adoption Certificate has been placed on record at page No. 17 to the Petition.

3. The undertaking/affidavit by the Petitioner Institution has been placed on record at page Nos. 19 to 24 to the Petition.

4. The Central Adoption Resource Authority (CARA), New Delhi has issued its No Objection Certificate dated 4th July 2023 as per Adoption Regulations, 2022 and Article 17(c) of the Hague

Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption 1993. The said No-objection Certificate has been placed on record at Page No. 25 to the Petition.

5. The prospective adoptive parents are Swedish Nationals, both residing at Broby, Sweden, aged about 43 and 44 years respectively. They have been married for the past 4 years (6th July 2019) with no biological children.

6. The Proposed Adopters' Joint Family Photograph and Passport copies of the prospective adoptive parents have been placed on record at page Nos. 26 to 28 to the Petition.

7. The health reports dated 10th May 2022 of the prospective adoptive parents state "Found no evidence of any symptoms of disease". The health reports have been placed on record at page No.36. Their HIV, Hepatitis B & C test reports of the prospective adoptive parents certify their case as Negative.

8. The Prospective Adoptive father is currently studying at the University of Boras in order to become a Liberian. For his study,

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he has student grants of SEK 415 and loan of SEK 971 per week provided by the government for the academic year 2022. The Letter of the Swedish Board of Student Finance dated 15th June 2022 has been placed on record at page No. 37 to the Petition.

9. The Prospective Adoptive mother is working as a Head of Administration Culture and Leisure Management with Osby Municipality since 1st January 2023 and her monthly salary is SEK 53,000 which is equal to Rs. 3,61,377/-. Her Employment Certificate has been placed on record at page No. 38 to the Petition.

10. The Income Tax Assessment, Economic Overview and Financial State of Affairs of the proposed adopters have been placed on record at page Nos. 32-58 to the Petition.

11. The childcare arrangement plan by the prospective adoptive parents has been placed on record at page No. 60 to the Petition.

12. The Home Study report dated 20th August 2021 by the authorities of by the Ostra Goinge Municipality, Broby, Sweden has

found the prospective adoptive parents suitable for adopting a child. The said report has been placed at page Nos. 62-95 to the Petition.

13. The Psychological Evaluation Report dated 23rd May 2022 by Gudrun Johansson, Licensed Psychologist/Licensed Psychotherapist states, “The comprehensive result of the investigation clearly shows that the prospective adoptive parents Sara and Andreas are in good mental health, and that they are stable and balanced people with a high functional capacity”. After all evaluation, the Psychologist recommends the couple as future adoptive parents. This Evaluation Report has been placed at page Nos. 96-109 to the Petition.

14. The Permission of the Receiving Country as per Article 5/17 of the Hague Convention has been placed on record at page Nos. 110-114 to the Petition.

15. The child security undertaking dated 2nd June 2023 given by the Prospective Adoptive mother’s sister and brother-in-law residing at Broby, Sweden to look after the said male minor child in case of any unforeseen mishap to the Proposed Adopters has been

placed on record at Page No. 119-120 to the Petition.

16. The Medical Examination Report dated 11th January 2023 of the said male minor Shourya states, “Health Status: Special Need child. He has delayed gross motor milestones. Shourya is suffering from delayed complications of the birth asphyxia that he suffered from at birth. He has globally delayed milestones and increased tone in his limbs, which requires regular and long-term physiotherapy and occupational therapy. His MRI brain is within normal limits. His BERA screening is pending”. The proposed adopters have countersigned this report. The said Medical Examination Report has been placed on record at page Nos. 126-133 to the Petition.

17. The H.I.V report of the said male minor child dated 15th July 2023 certifies the case as Negative. This report has been placed on record at page No. 135 to the Petition. The Post Card size photograph of the said male minor child has been placed on record at page No. 134 to the Petition.

18. The Joint Declaration of willingness and undertaking of

proposed adopters has been placed on record at page Nos. 136-140 to the Petition and states that the Proposed Adopters are willing to adopt the said male minor child Shourya born on 11th October 2020. They further undertake that they will allow personal visits by the Social Worker of the Authorized Foreign Adoption Agency (AFFA) during post-adoption follow-up.

19. The undertaking dated 14th March 2023 of the Authorized Foreign Adoption Agency (AFFA) “Adoptionscentrum”, Sweden for furnishing post adoption follow-up report and make alternative arrangement in case of disruption of the adoptive family has been placed on record at page Nos. 141-143 to the Petition.

20. The General Power of Attorney dated 31st March 2023 in favour of the Petitioner Institution has been placed on record at page Nos. 144-146 to the Petition.

21. The Petitioner Institution’s recognition from the Women and Child Development, Maharashtra State to place children in adoption is valid for a period up to 5th May 2025.

22. Mr. O. Hareendran, Scrutiny Officer has tendered Report / Representation of the Indian Council of Social Welfare dated 8th August 2023, which is taken on record and marked 'x' for identification.

23. Mr. Rakesh Kapoor, learned counsel appearing for the Petitioner has tendered the HIV and HbsAG test medical certificates dated 3rd August 2023 of the Prospective Adoptive parents which certifies that the case is negative result. This certificates are taken on record alongwith the covering letter dated 8th August 2023 and marked 'X-1' collectively for identification.

24. Having considered the material on record as well as the Report/Representation dated 8th August 2023 of the Scrutiny Officer, in my view, it would be in the interest of the said male minor child, if he is adopted by the Proposed Adoptive Parents.

25. 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.,¹** concerning challenge raised to the Juvenile Justice (Care and

¹ 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.”

26. Hence, there is no impediment in granting relief sought for in this Petition.

27. In these circumstances, the Petition is allowed in terms of prayer clauses (a) to (d) to the Petition, which read thus:-

(a) For the Adoption of the male minor Shourya, born on 11/10/2020 by the Proposed Adopters under Section 59(7) of the Juvenile Justice Act, 2015.

(b) For declaring the Proposed Adopters as Adoptive Parents of the minor Shourya and shall have all parental rights, privileges and responsibilities over the said child, now in the care and custody of the Petitioner St. Catherine's Home, Andheri, Mumbai - 400 058.

(c) Leave/permission be granted to apply the concern Municipal Authorities to issue Birth Certificate of the said minor Shourya, born on 11/10/2020 and stating that thereon that the Proposed Adopters as the Parents of the said minor.

(d) That the Proposed Adopters may be granted leave to remove the said child from the jurisdiction of this Hon'ble Court and to take the said minor to SWEDEN or wherever they may reside in future.

28. The Judge's Order is also signed separately.

29. It is directed that the Petitioner Institution shall obtain a further undertaking from the adoptive parents that they shall not give the said male minor child for further adoption without the prior leave of this Court. Once this undertaking is obtained, the same shall be filed on the record of this Court.

30. The Foreign Adoption Petition is accordingly, disposed of.
No order as to costs.

[R.I. CHAGLA J.]