

And

Fabrizio Giuseppe Crispo, Italian & Anr. ... Proposed Adopters

Mr. Rakesh Kapoor i/b M/s. Rakesh K.L. Kapoor & Co. for the Petitioner.
Mr. O. Hareendran, Scrutiny Officer, present.
Mr. D.S. Gurav, Chamber Registrar, present.

CORAM : R.I. CHAGLA, J.

DATED : 24th AUGUST, 2023.

ORDER :

1 By this Foreign Adoption Petition, the Petitioner along with the Proposed Adopters have sought adoption of the male minor Yatin (the said male minor) born on 03.09.2021. The said male minor was found abandoned by the Thane Police Station on 05.11.2021 and brought before the Child Welfare Committee (CWC), Thane and the child's custody was

given to the Petitioner Institution on the same day as per the order of the CWC, Thane, dated 05.11.2021 under the provisions of the Juvenile Justice (Care and Protection of the Children) Act, 2015. The Admission order of CWC, Thane, has been placed on record at page No.18 to the Petition.

2 After making due enquiry under Section 38 of the Juvenile Justice (Care and Protection of the Children) Act, 2015 (2 of 2016) the CWC, Thane declared the said minor Yatin “Free for Adoption” on 29.04.2022. The “Free for Adoption” Order has been placed on record at page No.17 to the Petition.

3 The Central Adoption Resource Authority (CARA), New Delhi has issued its No Objection Certificate dated 28.12.2022 to this adoption as per Adoption Regulations 2017 and Article 17(c) of the Hague Convention on the Protection of Children and Co-operation in respect of Inter-country Adoption 1993. The No Objection Certificate has been placed on record at page No.25 to the Petition.

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

5 The Proposed Adopters are Italian Nationals, both residing at

Robassomero, Italy, aged about 40 years and 39 years respectively. They have been married for past 6 years (25.05.2017) with no biological children.

6 Motivation letter from the proposed adopters has been placed on record at page No.55 to the Petition.

7 The Proposed Adopters joint family photograph and copies of passport have been placed on record at page Nos.26-34 to the Petition.

8 The health reports dated 12.04.2022 of the prospective adoptive parents states that both enjoy good health and are not affected by any psycho-physical pathology. Their HIV and HBsAg test report certifies the case as negative. These reports have been placed on record at page Nos.44-54 to the Petition.

9 The prospective adoptive father is a Barber and has his own Hair Salon situated in Robassomero, Italy since 2014 and his income for the year 2021 was Euro 15,818. His employment and Income certificate and income tax return 2021 have been placed on record at page Nos.58-65 to the Petition.

10 The prospective adoptive mother is a Hairdresser and has her own Hair Salon at Robassomero, Italy since 2009 and her income for the

year 2021 was Euro 20,000. Her employment certificate and income certificate and individual tax return 2021 have been placed on record at page Nos.66-78 to the Petition.

11 The financial declaration and certificate of residence have been placed on record at page Nos.79-88 to the Petition.

12 The Childcare Arrangements Plan statement from the proposed adopters has been placed on record at page No.89 to the Petition.

13 The home study report dated 10.06.2022 by the authorities of “C.I.F.A. For People NGO” Torino, Italy has found the proposed adopters suitable for adopting the said minor child. The said home study report has been placed on record at page Nos.91-117 to the Petition.

14 The Psychological Evaluation Report of the prospective adoptive parents dated 10.06.2022 by the Psychologist of CIFA For People NGO, Torino, Italy has found that the prospective adoptive parents are suited to adopt an Indian child. This report has been placed on record at page Nos.118- 124 to the Petition.

15 The Approval dated 23.01.2019 from the Juvenile Court of Piedmont and Aosta Vally and Adoption Guarantee Letter dated

16.10.2019 has been placed on record at page Nos.125-129 to the Petition. The Permission dated 11.01.2023 of the Receiving Country as per Article 17 of the Hague Convention is on record at Annexure-A at page Nos.1-5.

16 The learned Counsel appearing for the Petitioner and the adopted parents has tendered the permission dated 11.01.2023 under Article 17 of the Hague Convention which is duly attested. The document is taken on record and marked 'X' for identification.

17 The child security undertaking dated 10.10.2022 given by the cousins of the prospective adoptive parents residing at Moncalieri, Italy to look after the said male minor in the event of any unforeseen mishap to the Proposed Adopters has been placed on record at page Nos. 151-153 to the Petition.

18 The Medical Examination report of the minor dated 16.05.2022 states, "Health Status: Special Need-Low birth weight and brain disease white matter disease. Overall observation of the child: Yatin is premature, low birth weight baby with delayed milestones. With ongoing physiotherapy he has improved better than before. However, MRI brain is stating white matter disease is possible. May need to evaluate further with age." The said report has been placed on record at page

Nos.159-166 to the Petition. The proposed adopters have countersigned this report.

19 The H.I.V. report of the said male minor dated 04.07.2023 certifies the case as Non Reactive. This report has been placed on record at page No. 170 to the Petition.

20 The Post Card Size Photograph of the said male minor is on record at page No.171 to the Petition.

21 The consent, willingness and undertaking of the proposed adopters states that they are willing to adopt the said minor child Yatin. They undertake that they will allow personal visits by the Representative of the Authorized Foreign Adoption Agency (AFFA) during post-adoption follow-up.

22 The undertaking dated 06.10.2022 of the Authorized Foreign Adoption Agency (AFFA) “CIFA For Children-International Centre for Children and Family”, Torino, Italy to provide follow-up reports of the said male minor child and make alternative arrangements in case of disruption of the adoptive family has been placed on record at page Nos.178-181 to the Petition.

23 As regards the change of name, the proposed adopters’ desire

that the said male minor 'Yatin' be renamed as "Pietro Yatin".

24 The Power of Attorney dated 10.10.2022 duly executed by the proposed adopters in favour of the Petitioner institution has been placed on record at page Nos. 181-185 to the Petition.

25 The Petitioner institution's recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid up to 05.05.2025.

26 The Scrutiny Officer Mr. O. Hareendran has tendered the report/representation from the Indian Council of Social Welfare, dated 19.08.2023 which is taken on record and marked 'Y' for identification.

27 Having considered the material on record as well as report of the Scrutiny Officer Mr. O. Hareendran, which is marked 'Y' for identification, in my view, it would be in the interest of said male minor child if he is adopted by the proposed adopters.

28 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 Protection of Children) Amendment Act, 2021, the Division Bench of this Court on

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

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.”

29 Hence, it is clear that this Court can consider and dispose of the present Petition.

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

- (a) For the Adoption of the proposed male minor Pietro Yatin born on 03/09/2021 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 said minor Pietro Yatin, having all parental rights, privileges and responsibilities over the said minor now in the care and custody of Children of the World India Trust, Vishwabalak Kendra, Plot No. 9 & 10, Sector-12 Nerul, Navi Mumbai – 400 706.
- (c) That the proposed adopters be allowed to change the name of the said minor YATIN to Pietro Yatin.
- (d) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor Pietro Yatin born on 03/09/2021 and showing the proposed adopters as Parents.
- (e) That the Proposed Adopters may be granted leave to remove the said minor Pietro Yatin from the jurisdiction of this Hon'ble Court and to take the said minor to ITALY or wherever they may reside in future.

31 The Judge's Order is also accepted and signed separately.

32 It is directed that the Petitioner shall obtain a further undertaking from the Adoptive Parents that they shall not give the adopted 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.

33 The above Foreign Adoption Petition is accordingly, disposed of. There shall be no order as to costs.

(R.I. CHAGLA, J.)

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signed by
WAISHALI
SUSHIL
WAGHMARE
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