

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

FOREIGN ADOPTION PETITION NO. 24 OF 2022
WITH
JUDGE'S ORDER NO. 90 OF 2022
IN
FOREIGN ADOPTION PETITION NO. 24 OF 2022

Janani Ashish Charitable Trust ...Petitioner
And
David Ortega Hermoso and
Miriam Perez Rodriguez, Spanish Nationals ...Proposed Adopters

Mr. Rakesh Kapoor, for the petitioner.
Mr. O. Hareendran, Scrutiny Officer, Indian Council of Social
Welfare.
Ms. Shonali Dighe, Chamber Registrar.

CORAM : MANISH PITALE, J
DATE : 20th JANUARY, 2023

P.C. :

. By this petition, the petitioner, an adoption agency recognized by the State Government and Central Adoption Resource Authority (CARA), New Delhi, has approached this Court seeking an order for adoption of a minor girl child Asmita alias Asmita Ortega Perez by the proposed adopters.

2. Heard Mr. Kapoor, the learned counsel for the petitioner and Mr. O. Hareendran, Scrutiny Officer, Indian Council of Social Welfare. He has tendered report of the council in the context of the

present petition. The same is taken on record and marked 'X'.

3. It is stated in the petition that the minor child appears to have been born on 10/7/2018 and that she was found abandoned at Thane Railway Station on 15/2/2020. The child was admitted to the petitioner institution and presented before the Child Welfare Committee (CWC), Thane on 18/2/2020. The CWC granted custody of the child to the petitioner herein under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015. On 1/12/2020, the CWC passed an order under Section 38 of the said Act declaring the minor child legally free for adoption. The CARA has issued its no objection certificate for adoption, which is placed on record. The proposed adopters are Spanish Nationals, having been married for about 20 years. They have two biological sons aged 17 years and 13 years respectively. The copies of relevant documents showing the health status of the proposed adopters are placed on record.

4. It is stated that the prospective adoptive father is working as an In-charge with Fundacio Tallers de Cataluna, Spain since 1995 and his annual gross salary is Euro 39,077. The prospective mother is working as a Commercial Assistant with a Coffee Company 'Marcilla S.L' Spain and her annual gross salary is Euro 32,000. Copies of relevant documents including income tax certificates and employment certificates are placed on record.

5. The home study report of the proposed adopters conducted by authorities of Fostering & Adoption Institute of Catalonia, Regional Government of Catalonia, Spain is placed on record who positively recommended the proposed adopters as suitable adoptive parents and capable of taking care of the child. Copies of letters sent by the two biological sons of the proposed adopters are also placed on record to indicate that they are looking forward to the minor child joining the family of the proposed adopters.

6. The documents pertaining to the child including medical status are placed on record and it is stated that the proposed adopters have seen the photograph of the minor child and having perused the medical reports, they are ready to adopt the minor child.

7. Therefore, this Court is of the opinion that the prayers in the present petition deserve to be granted.

8. It is significant to note that a recent order passed by the Division Bench of this Court in the case of *Nisha Pradeep Pandya alias Nisha Amit Gor and Anr. Vs. Union of India and Ors. in Writ Petition No.32065/2022 on 10/1/2023*, has specifically granted a direction as an ad-interim order that pending the challenge to the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, the petitions already filed and pending can be placed before the concerned Court and that adjudication of such matters can

continue during the pendency of challenge raised against the Amendment Act. 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. In view of the above, this Court is satisfied that the prayers made in the present petition can be allowed. Accordingly, the petition stands allowed in terms of prayer clauses (a) to (e) which read as follows :

(a) For the Adoption of the proposed female minor

Asmita Ortega Perez born on 10/7/2018 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 female minor Asmita Ortega Perez having all parental rights, privileges and responsibilities over the said minor, now in the care and custody of the Petitioner institution Janani Ashish Charitable Trust, Dombivali, Thane.

(c) That the proposed adopters be allowed to change the name of the said minor Asmita to Asmita Ortega Perez.

(d) Leave/permission be granted to apply the concern Municipal Authorities to issue Birth Certificate of the said minor Asmita Ortega Perez, born on 10/07/2018 and stating thereon that the Proposed Adopters are Parents of the said minor.

(e) That the Proposed Adopters may be granted leave to remove the said minor Asmita Ortega Perez from the jurisdiction of this Hon'ble Court and to take the said minor to SPAIN or wherever they may reside in future.

10. The Judge's order is separately signed.

(MANISH PITALE, J)