

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION

FOREIGN ADOPTION PETITION NO. 22 OF 2023
WITH
JUDGES ORDER NO. 100 OF 2023
IN
FOREIGN ADOPTION PETITION NO. 22 OF 2023

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Bal Asha Trust	...	Petitioner
V/s.		
Harvey Jackson Pate III And ... Crystal Marie Pate & Micah Roshan Pate (Minor)		Proposed Adopters

Mr. Rakesh K.L. Kapoor i/b Ms. Rakesh K.L. Kapoor & Co., Advocate
for the Petitioner.

Mr. O. Hareendran, Scrutiny Officer, ICSW present.

Mr. Dilip S. Gurav, Chamber Registrar present.

CORAM : R.I. CHAGLA, J.
(IN CHAMBER).

DATE : 21ST DECEMBER, 2023.

PC:

1. This Foreign Adoption Petition is filed seeking adoption of the male minor Roshan (“**the said male minor**”) born on 7th February 2018. The said male minor was found abandoned at Civil Hospital, Ahmednagar and after discharge from hospital, the said male minor

was presented before the Child Welfare Committee (CWC), Ahmednagar and admitted to District Probation and Aftercare Association Sanchalit Shishugriha, Ahmednagar on 28/05/2018.

2. After making due inquiry under section 38 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) the (CWC), Ahmednagar declared the said male minor “Legally Free for Adoption” on 25th May 2019. The Free for adoption Certificate is on record at page Nos. 17-18, to the Petition.

3. Since the said male minor is Special needs child with prematurity, bilateral NLD obstruction, Tuberculosis, mild developmental delay, the CWC Ahmednagar transferred the said male minor child to CWC Mumbai City II on 26th June 2019 for further rehabilitation and treatment. On 28th June 2019, the said male minor was admitted to the Petitioner institution as per the order of CWC Mumbai City II dated 28th June 2019 under the provisions of the said Act. The transfer order of CWC Ahmednagar and admission order of CWC Mumbai City II are on record at page Nos. 19-21, to the Petition.

4. The Central Adoption Resource Authority (CARA), New Delhi has issued No Objection Certificate dated 15th December 2022 to this adoption 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 is on record at Page No. 29, to the Petition.

5. The undertaking/affidavit by the Petitioner institution is on record at page Nos. 23-28, to the Petition.

6. The Prospective Adoptive Parents are American Nationals, residing at Florida, U.S.A. both aged about 34 years, having been married for the past 10 years (26th October 2013) with no biological children. However, they have one adopted son aged about 5 years from USA through domestic adoption on 05th September 2018. His Final Decree of Adoption, Birth Certificate, Consent Letter and Health Report are on record at Page Nos. 44-60, to the Petition.

7. The Proposed Adopters Joint Family Photograph and Copies of Passport are on record at page Nos. 30-34, to the Petition.

8. The Motivation Letter from the Proposed Adopters is on record at page No. 103-105, to the Petition.

9. The Medical report dated 24th October 2022 of the Prospective Adoptive Father states, "Open Heart Surgery, Tumor Removal done on 8th June 1989. Result of surgery/course of treatment: completely resolved, Normal EEG 1 year ago. He is suitable for adoption". His HIV and HBsAg Test Reports certify the case as Non-Reactive. These reports are on record at Page Nos. 61 to 84, to the Petition.

10. The Medical report dated 26th October 2022 of the Prospective Adoptive Mother is on record and it states, "Do not have

any unfavorable physical, mental, or psychological factors that might affect the upbringing of a child”. Her HIV and HBsAg Test Reports certify the case as Non-Reactive. These reports are on record at Page Nos. 85-102, to the Petition.

11. The Prospective Adoptive Father is working as Director of Student Ministries with North Jax Baptist Church, Florida, U.S.A. since February, 2021 and his annual salary is \$72,916.00. His Employment & Income certificate and pay slips are on record at page No. 106-110, to the Petition. The Prospective Adoptive mother is a Homemaker.

12. The Income Tax Returns, Bank Reference and Residence Certificate are on record at page Nos. 111-122, to the Petition.

13. The Childcare Plan Letter of the Proposed Adopters is on record at page No. 123-126, to the Petition.

14. The home study reports dated 13th December 2021 and 14th November 2022 of the authorities of “Lifeline Children’s Services, Inc.”, Alabama, U.S.A. have found that the Proposed Adopters are physically, emotionally, mentally, behaviorally and financially able to adopt one child, or a sibling group of two, with medical special needs from India. The said home study report is on record at page Nos. 127-153, to the Petition.

15. The Psychological Evaluation Report of the Prospective Adoptive Parents dated 15th September 2021 by the Psych Ed

Connections, Virginia, USA is on record at page Nos. 154-173 and the report has found the couple suitable to adopt a child.

16. The Permission of the Receiving Country as per Article 5/17 of the Hague Convention is on record at page Nos. 174-177, to the Petition.

17. The Child Security undertaking dated 11th October 2022 from the Prospective Adoptive Mother's brother and sister-in-law residing at Florida, USA to look after the said male minor in case of any mishap to the Proposed Adopters is on record at page No. 188-190, to the Petition.

18. The Medical Examination Report of the said male minor dated 25th June 2022 states that "Health Status: Special Needs. Roshan is pleasant child. He is delayed with preterm birth weight 900gms. He had mild dysmorphic facies with mild developmental delay and autistic features and karyotyping shows abnormal with micro duplication of chromosome. He is under evaluation by a Pediatric Neurologist. He was also diagnosed with tuberculosis and has been treated". The Proposed Adopters have countersigned this Report, which is on record at page Nos. 197-205, to the Petition.

19. The proposed Adopters have also given a Medical Letter along with a detailed report of LKB Medicine Pediatrics, Alabama after reviewing the said male minor Roshan's medical report. These reports are on record at page Nos. 211-215, to the Petition.

20. The Report of Psychological Testing dated 23rd June 2022 of the said male minor states that he shows mild features of autism. His overall DQ is 77%, which is suggestive of borderline developmental delay. His Language, Speech and Hearing Report dated May, 2022 is also on record and it states that he has significant delay in speech and language acquisition. He requires intensive speech and language stimulation and conducive environment to achieve further milestones. The Proposed Adopters have countersigned these reports, which are on record at page Nos. 206-209, to the Petition.

21. The H.I.V. report of the proposed minor dated 2nd July 2019 certifies the case as Non Reactive. This report is on record at page No. 219, to the Petition.

22. The Post Card Size Photograph of the said male minor is on record at page No.220, to the Petition.

23. As regards the change of name, the Proposed Adopters desire that the said male minor 'Roshan' be renamed as "Micah Roshan Pate".

24. The Child approval Letter and undertaking of the Proposed Adopters is on record and it states that they are willing to adopt the said male minor child Roshan. They further undertake that they will allow personal visits by the representative of the Authorized Foreign Adoption Agency (AFAA) during post-adoption follow up. The said

declaration is on record at page Nos.221-226, to the Petition.

25. The undertaking dated 27th October 2022 of the Authorized Foreign Adoption Agency (AFFA) “Lifeline Children’s Services”, Alabama, U.S.A. to provide follow-up reports of the said male minor child and make alternative arrangements in case of disruption of the adoptive family is on record at page No. 227-229, to the Petition.

26. The Special Power of Attorney dated 13th October 2022 duly executed by the Proposed Adopters in favour of the Petitioner institution is on record at page Nos. 230-232, to the Petition.

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

28. Mr. O. Hareendran, Scrutiny Officer has tendered Report/representation from the Indian Council of Social Welfare (ICSW) dated 11th December 2023 which is taken on record and marked ‘X’ for identification.

29. Having considered the material on record as well as the Report of the Scrutiny Officer dated 11th December 2023 marked ‘X’, in my view, it would be in the interest of the said male minor if he is adopted by the Proposed Adoptive Parents.

30. 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 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

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

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.”

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

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

“(a) For the Adoption of the proposed minor Micah Roshan Pate born on 07/02/2018 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 said minor Micah Roshan Pate and having all parental rights, privileges and responsibilities over the said minor now in the care and custody Bal Asha Trust, Bal Asha Dham, Anand Niketan, Dr. E. Moses Road, Mahalaxmi, Mumbai – 400 011.

(c) That the proposed adopters be allowed to change the name of the minor ‘Roshan’ to “Micah Roshan Pate”.

(d) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor Micah Roshan Pate born on 07/02/2018 and showing the proposed adopters as Parents.

(e) That the Proposed Adopters may be granted leave to remove the said minor Micah Roshan Pate

from the jurisdiction of this Hon'ble Court and to take the said minor to U.S.A. or wherever they may reside in future.

33. The Judge's Order is accepted and signed separately.

34. It is directed that the Petitioner 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.

35. The present Foreign Adoption Petition is accordingly, disposed of. There shall be no orders as to costs.

(R.I. CHAGLA, J)