

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
FOREIGN ADOPTION PETITION NO. 16 OF 2023
WITH
JUDGE'S ORDER NO. 76 OF 2023
WITH
JUDGE'S ORDER NO. 77 OF 2023
WITH
JUDGE'S ORDER NO. 78 OF 2023

Bal Asha Trust

...Petitioner

And

Bastiano Deledda & Anr.

...Proposed Adopters

Mr. Rakesh Kapoor i/by M/s. R.K.L. Kapoor & Co. for the Petitioner.
Swaroopaa Arora, Senior Social Worker Adoption
Ms. Angel Aloor, Social Worker Adoption, Bal Asha Trust.
Mr. O. Hareendran, Scrutiny Officer, Indian Council of Social Welfare.
Mr. D.S. Gurav, Chamber Registrar present.

CORAM : R.I. CHAGLA J

DATE : 26 October 2023

ORDER :

1. By this Foreign Adoption Petition jointly filed by the

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KHOT

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Petitioner and Proposed Adopters, adoption of the siblings being male minors Rajesh Raju Shaikh and Rahul Raju Shaikh (“**the said male minors**”) and female minor Aayasha Raju Shaikh (“**the said female minor**”) are being sought.

2. The said male minors were born on 10th June 2012 and 25th December 2017 respectively and the said female minor was born on 10th May 2013.

3. The said male minors and the said female minor were admitted to the Petitioner Institution on 29th October 2021 through J.J. Marg Police Station as per the orders of the Child Welfare Committee (CWC), Mumbai City - I dated 29th October 2021 under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (“**the said Act**”). Thereafter on 10th March 2022, the maternal aunt of the said minors/siblings being the guardian of the children executed a Deed of Surrender before the said CWC for the children’s further rehabilitation. The Safe Custody Orders of the CWC have been placed on record at page Nos.19-21 to the Petition.

4. After making due inquiry under Section 38 of the said

Act, the CWC, Mumbai City-I declared the said male minors and the said female minor “Legally Free for Adoption” on 6th September 2022. The Free for Adoption Certificate has been placed on record at page Nos. 17-18 to the Petition.

5. The Central Adoption Resource Authority (CARA), New Delhi has issued its No Objection Certificate dated 22nd March 2023 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 has been placed on record at Page No. 34 to the Petition.

6. The undertaking/affidavit by the Petitioner institution is on record at page Nos. 26 - 31 to the Petition.

7. The Proposed Adopters are Italian Nationals, residing at Olbia (SS), Italy aged about 50 and 48 years respectively, They have been married for the past 15 years (5th April 2008) with no biological children. However, they have one adopted son born in Sassari, Italy on 23rd July 2009. He was in the foster care with the

Proposed Adopters since January 2014 and the adoption process was completed in the year January 2020. His Adoption Order, Birth Certificate, Consent Letter and Health Report are on record at page Nos. 53-79 to the Petition.

8. The Motivation Letter from the Proposed Adopters is on record at Page Nos. 98-99 to the Petition.

9. The Proposed Adopters Joint Family Photograph and Copies of Passport are on record at page Nos. 33-41 to the Petition.

10. The Health Reports dated 28th February 2022 of the Prospective Adoptive Parents states that both enjoy excellent psychophysical health and do not have any signs of mental disorder or infectious diseases. Their HIV and HBsAg test Reports certify the case as Non Reactive. These Reports have been placed on record at Page Nos. 80-97 to the Petition.

11. The Prospective Adoptive Father is working as a Middle Manager with “Port System Authority of the Sea of Sardina” since 1st November 2010 and his gross income for the year 2021 is of

Euros 74,211.21. His Employment & Income Certificate and Income Tax Return for the year 2021 are on record at page No.100-107 to the Petition.

12. Prospective Adoptive Mother is working, as an Expert in Medical Physics for Local Health Authority N.2 “Gallura” since 1st September 2009 and her income for the year 2021 is of Euro 90,643.14. Her Employment & Income Certificate and Income Tax Return for the year 2021 are on record at page No.108-115 to the Petition.

13. The Financial Declaration and Certificate of Residence are on record at page Nos. 116-126 to the Petition.

14. The Childcare Arrangements Plan statement from the Proposed Adopters is on record at page No. 127-128 to the Petition.

15. The Home Study Report dated 22nd March 2022 by the authorities of “C.I.F.A. ONG for Children”, Turin, Italy is on record and the report states that the Proposed Adopters have the

necessary social, cultural, and emotional resources to welcome, raise and educate a child/children of foreign nationality. The said Home Study Report is at page Nos. 129-162 to the Petition.

16. The Psychological Evaluation Report of the Prospective Adoptive Parents dated 22nd March 2022 by Dr. Antonella Scala of CIFA Psychologist is on record and the report has recommended the couple for the adoption of an Indian child. This report is at page Nos. 163-167 to the Petition.

17. The permission of the Receiving Country as per Article 5/17 of the Hague Adoption Convention is on record at page Nos. 168-180 to the Petition.

18. The child security undertaking 22nd March 2023 given by the Prospective Adoptive Father's brother and sister-in-law and the Prospective Adoptive Mother's sister and brother-in-law residing at Olbia, Italy to look after the said minors in the event of any unforeseen mishap to the Proposed Adopters is on record at Page No. 201-203 to the Petition.

19. The Medical Examination Report of the said male minor Rajesh dated 2nd September 2022 states, “Health Status: Normal child. Overall observation of the child: He is developmentally normal for his age. He has not suffered from any major illness needing hospitalization and is currently disease free”. The Proposed Adopters have countersigned this Report, which is at page Nos. 208-216 to the Petition.

20. The Report of Psychological Testing of the said male minor Rajesh dated 8th & 15th June 2023 states that Rajesh has average intellectual functioning and social functioning. The Proposed Adopters have countersigned this report, which is at page Nos. 217-221 to the Petition.

21. The Medical Examination Report of the minor Rahul dated 2nd September 2022 states, “Health Status: Normal child. Overall observation of the child: He is developmentally normal for his age. He has not suffered from any major illness needing hospitalization and is currently disease free”. The Proposed Adopters have countersigned this Report, which is at page Nos. 226-234 to the Petition.

22. The Report of Psychological Testing of the said male minor Rahul dated 8th & 15th June 2023 states that Rahul has average intellectual functioning and social functioning. The Proposed Adopters have countersigned this Report, which is at page Nos. 235-239 to the Petition.

23. The Medical Examination Report of the said female minor Aayasha dated 2nd September 2022 is on record and it states, "Health Status: Normal child. Overall observation of the child: She is a pleasant girl who is in good physical and mental health". The Proposed Adopters have countersigned this Report, which is at page Nos. 244-252 to the Petition.

24. The Report of Psychological Testing of the said female minor dated 8th & 15th June 2023 states that Aayasha has average intellectual functioning and social functioning. The Proposed Adopters have countersigned this Report, which is at page Nos. 253-257 to the Petition.

25. The Counseling Reports of the Children by the Counseling Psychologist has been placed on record at page Nos. 258-

273 to the Petition. The Proposed Adopters have countersigned these Reports.

26. The views and suggestions on the adoption of the said male minors along with the said female minor by the Consulting psychologist and the Social Workers of the Petitioner Institution states “Background information: Rajesh was transferred to David Sassoon Industrial School on April 2023 due to his tantrums and behavioral issues. He also stated that he does not want to go into adoption. His other two siblings are willing to go in adoption. At the end of all the counseling sessions the conclusion was made that Rajesh wants to go into adoption with his siblings”. The Proposed Adopters have countersigned this Report, which is at page Nos. 274-276 to the Petition.

27. The H.I.V. Report of the said male minors and said female minor dated 3rd December 2021 certifies the case as Non Reactive. These Reports are on record at page Nos. 280-282 to the Petition.

28. The post card size photographs of the said male

minors and said female minor are on record at page Nos. 283-285 to the Petition.

29. The consent, willingness and undertaking of the Proposed Adopters states that they are willing to be appointed and declared as the Adoptive Parents of the said male minors and the said female minor. They further undertake that they will allow personal visits by the representative of the Authorized Foreign Adoption Agency (AFFA) during post-adoption follow-up. The said Declaration is on record at page Nos. 286-294 to the Petition.

30. The undertaking dated 11th November 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 children and make alternative arrangements in case of disruption of the adoptive family is on record at page Nos. 295-297 to the Petition.

31. As regards the change of name, the Proposed Adopters’ desire that the said male minor ‘Rajesh Raju Shaikh’ be renamed as “Rajesh Deleda”, the said male minor ‘Rahul Raju

Shaikh' be renamed as "Rahul Deledda" and the said female minor "Aayasha Raju Shaikh" be renamed as "Aayasha Deledda" respectively.

32. The Power of Attorney dated 2nd February 2023 duly executed by the Proposed Adopters in favour of the Petitioner institution is on record at page Nos. 299-302 to the Petition.

33. 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.

34. Mr. O. Hareendran, Scrutiny Officer has tendered Scrutiny Report/Representation of Indian Council of Social Welfare dated 4th October 2023, which is taken on record and marked "X" for identification.

35. Having considered the documents placed on record as well as the Report of Mr. O. Hareendran, Scrutiny Officer marked X, I am of the view that it would be in the interest of the said male minors and the said female minor, if they are adopted by the Prospective Adoptive Parents.

36. 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.

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

(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."*

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

38. 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 children male minors **Rajesh Deledda**, born on **10/06/2012**, **Rahul Deledda**, born on **25/12/2017** and female minor **Aayasha Deledda**, born on **10/05/2013** respectively 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 minors 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 minors ‘**Rajesh Raju Shaikh**’ to “**Rajesh Deledda**”, ‘**Rahul Raju Shaikh**’ to “**Rahul Deledda**” and ‘**Aayasha Raju Shaikh**’ to “**Aayasha Deledda**” respectively,*
- (d) *Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minors **Rajesh Deledda**, **Rahul Deledda** and **Aayasha Deledda** respectively and showing the proposed adopters as Parents.*
- (e) *That the Proposed Adopters may be granted leave to remove the said minors from the jurisdiction of this this Hon’ble Court and to take the said children to to ITALY or wherever they may reside in future.”*

39. The Judge’s Orders are accepted and signed separately.

40. It is directed that the Petitioner institution will

obtain further undertakings 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.

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

[R.I. CHAGLA J.]