

Manoj Wakle

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

FOREIGN ADOPTION PETITION NO.18 OF 2023
WITH
JUDGE'S ORDER NO. 88 OF 2023
IN
FOREIGN ADOPTION PETITION NO.18 OF 2023

Bal Asha Trust

...Petitioner

And

Mr. Arnab Ghosh, American and
Mrs. Chaitali Ghosh, American

...Proposed
Adopters

Ms. Rakesh K.L. Kapoor i/by Mr. 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.

DATE : 30TH NOVEMBER, 2023.

ORDER :

1. By this Foreign Adoption Petition, jointly filed by the
Petitioner and the Proposed Adopters, adoption of the female minor

Asha Saira (“the said female minor”) born on 06th November, 2018 is sought. The said female minor was found abandoned by the Kurla Police Station, Mumbai on 13/10/2021 and produced before the Child Welfare Committee (CWC)-1, Mumbai Suburban District and admitted to the Additional Observation Home, Kankurd, Mumbai on the same day. On 25/04/2022 the said female minor was transferred to the Petitioner institution as per the order of CWC dated 25/04/2022 under the provisions of the Juvenile Justice (Care and Protection of the Children) Act, 2015 (“the said Act”) for her future rehabilitation. The Transfer and safe order of CWC, are on record at page No.19-20 to the Petition.

2. After making due inquiry under Section 38 of the said Act, the CWC, Mumbai City II declared the said female minor “Legally Free for Adoption” on 19/10/2022. The Free for Adoption Certificate is on record at page Nos.17-18 to the Petition.

3. The Central Adoption Resource Authority (CARA), New Delhi has issued its No Objection Certificate dated 26/07/2023 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 is on record at page No.30 to the Petition.

4. The undertaking/affidavit by the Petitioner institution is on record at page Nos.24-29 to the Petition.

5. The Proposed Adopters are American Nationals of Indian Origins (OCI Card Holders) residing at Ohio, U.S.A., aged about 51 years and 48 years respectively. They have been married for past 20 years (14/12/2003) with no biological children.

6. The Proposed Adopters Joint Family Photograph and copies of passport OCI Cards are on record at page Nos.31-42 to the Petition.

7. The Medical reports dated 16/09/2022 of the Prospective Adoptive Parents states that they are in good health and free of communicable disease and not observed any grave, chronic or contagious diseases such as AIDS, HIV, Tuberculosis or other life-threatening diseases. All clinical examination, laboratory results and medical tests have shown all results to be negative. These reports can be found at page Nos.50-57 to the Petition.

8. The Prospective Adoptive father is working as a Staff Scientist with Cleveland Clinic since 02/01/2007 and his annual gross salary is \$100,199. His Income and Employment Certificate is

on record at page Nos.58-60 to the Petition.

9. The Prospective Adoptive Mother is working as a Staff Scientist with Cleveland Clinic since 23/07/2007 and annual gross Salary is \$112,060. Her Income and Employment Certificate is on record at page Nos.61-62 to the Petition.

10. The U.S. 1040 Tax Returns and proof of residence are on record at page Nos.63-81 to the Petition.

11. The Childcare Arrangements statement from the proposed adopters is on record at page Nos.82-83 to the Petition.

12. The home study reports dated 27/12/2019, 03/05/2021 and 06/08/2022 by the authorities of "Adoption Home Study Services of Ohio Inc." have found the proposed adopters suitable for adopting a minor child, either gender, between the ages of four and five (4-5) years at the time of referral. The said home study reports are on record at page Nos.84-123 to the Petition.

13. The Psychological Evaluation Report of the Prospective Adoptive Parents dated 28/10/2022 by the Deborah A Koricke, PhD, Clinical and Forensic Psychologist states that they are mentally and emotionally stable to care for an adopted child. The said reports are on record at page Nos.124-135 to the Petition.

14. The permission of the Receiving country as per Article 5/17 of the Hague Adoption Convention is on record at page Nos. 136-144 to the Petition.

15. The Child Security undertaking dated 25/09/2023 by the Prospective Adoptive Mother's brother and sister-in-law residing at Indore, Madhya Pradesh to look after the said female minor in the case of any mishap to the Proposed Adopters is on record at page Nos. 154 to the Petition.

16. The Medical Examination report of the said female minor dated 04/11/2022 states, "Health Status: Normal child. Over all observation of the child: Asha Saira is a pleasant girl. Who is in good physical and mental health. She studies in Jr. KG Maratha Primary School." The Proposed Adopters have countersigned this Report, which is on record at page Nos.159-167 to the Petition.

17. The Report of Psychological Testing dated 25th August, 2022 of the said female minor states that she has Average Intellectual functioning and social functioning. Her Language, Speech and Hearing Report dated February, 2023 states that Asha Saira is having delay in speech and language milestones. The speech therapy sessions and conducive environment are suitable for achieving her

full potentials. The Proposed Adopters have countersigned the said reports which are on record at page Nos. 168-172 to the Petition.

18. The H.I.V. report of the said female minor dated 10/05/2022 certifies the case as Non Reactive. The said report is on record at page No. 175 to the Petition. The Post Card Size Photograph of the said female minor is on record at page No.176 to the Petition.

19. As regards the change of name, the Proposed Adopters desire that the said female minor 'Asha Saira' be renamed as "Emily Ghosh".

20. The declaration of consent and willingness of the Proposed Adopters states, that they are willing to adopt the said female minor child and further undertakes they will allow personal visits by the representative of the Authorized Foreign Adoption Agency (AFAA) for follow-up of the progress of the child as required under the Adoption Regulations. The said declaration is on record at page Nos.177-179A to the Petition.

21. The undertaking dated 08/03/2023 by the Authorized Foreign Adoption Agency (AFAA) "International Adoption Net" USA to provide follow-up reports of the said female minor child and make alternative arrangements in case of disruption of the adoptive family

is on record at page Nos.180-182 to the Petition.

22. The Power of Attorney dated 03/05/2023 duly executed by the Proposed Adopters in favour of the Petitioner institution is on record at page Nos. 183-184 to the Petition.

23. The Petitioner institution's recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid for a period up to 05/05/2025.

24. The Scrutiny Officer Mr. O. Hareendran has tendered the report/representation from the Indian Council of Social Welfare, dated 28/11/2022 which is taken on record and marked 'X' for identification.

25. Having considered the material on record as well as report of the Scrutiny Officer Mr. O. Hareendran, which is marked 'X' for identification, I am of the view that it would be in the interest of said female minor child if she is adopted by the Proposed Adopters.

26. 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

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

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.”

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

28. 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 minor Emily Ghosh born on 06/11/2018 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 Emily Ghosh 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 ‘Asha Saira’ to “Emily Ghosh”.
- (d) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor Emily Ghosh born on 06/11/2018 and showing the proposed adopters as

Parents.

(e) That the Proposed Adopters may be granted leave to remove the said minor Emily Ghosh 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.

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

30. It is directed that the Petitioner shall obtain a further undertaking from the Adoptive Parents that they shall not give the said female 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.

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

[R.I. CHAGLA, J.]