

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. 10 OF 2024
WITH
JUDGE'S ORDER NO. 68 OF 2024
IN
FOREIGN ADOPTION PETITION NO. 10 OF 2024

Bal Asha Trust

...Petitioner

And

Jonathan Elliott Buttner
Jerusha Loree Buttner

...Proposed
Adopters

Mr. Rakesh Kapoor i/by M/s. Rakesh K.L. Kapoor & Co. for the
Petitioners.

Mr. O. Hareendran, Scrutiny Officer present.

Mr. D.S. Gurav, Chamber Registrar present.

CORAM : R.I. CHAGLA J

DATE : 24 April 2024

ORDER :

1. By this Foreign Adoption Petition, the Petitioner and the
Proposed Adopters have sought adoption of the male minor Gaurav
("the said male minor"), born on or about 08/08/2022. The said

male minor was found abandoned by Bhoiwada Police Station, Mumbai on 20/09/2022 and produced before the Child Welfare Committee (CWC), Mumbai City –II on the same day. The said CWC admitted the said male minor to the Petitioner Institution “Bal Asha Trust”, Mumbai on 20/09/2022 as per the order of the said CWC for the said male minor’s immediate care and protection under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (“**the said Act**”). The Admission Order of the CWC is on record at page No. 19 to the Petition.

2. After making due inquiry under Section 38 of the said Act, the CWC, Mumbai City-II declared the said male minor “Legally Free for Adoption” on 13/02/2023. 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 No Objection Certificate dated 22/02/2024 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. 25 to the Petition.

4. The Undertaking/Affidavit by the Petitioner Institution is on record at page Nos. 20-24 to the Petition.

5. The Prospective Adoptive Parents are American Nationals, residing at Virginia, U.S.A. aged about 35 and 31 years respectively, having been married for the past 6 years (24/03/2018) with no biological children. However, they have one adopted daughter aged about 5 years from Bihar, India. Her Birth Certificate, Certificate of Citizenship, Adoption Order, Medical report, consent letter and post adoption progress report are on record at page Nos. 39-67 to the Petition.

6. The Motivation Letter from the Prospective Adoptive Parents is on record at page Nos. 80-81 to the Petition.

7. The Proposed Adopters Joint Family Photograph and Copies of Passport are on record at page Nos. 26-32 to the Petition.

8. The Medical Report dated 25/01/2023 of the Prospective Adoptive Parents states that they do not suffer from any chronic, contagious or fatal disease and are fit to adopt. Their HIV Test

Reports certify the case as Negative. These Reports are on record at page Nos. 68-79 to the Petition.

9. The Prospective Adoptive Father is working as a Principal Software Engineer with Elasticsearch Inc., U.S.A. and his annual salary is \$ 192,400. His Employment & Income certificate is on record at page No.83 to the Petition.

10. Prospective Adoptive mother is a Homemaker.

11. The Income Tax Returns, Bank References and Residence Certificate are on record at page Nos. 86-106 to the Petition.

12. The Childcare Plan undertaking of the Prospective Adoptive Parents is on record at page Nos. 107-108 to the Petition.

13. The home study Report dated 05/04/2023 of the authorities of “America World Adoption”, U.S.A. has found the Prospective Adoptive Parents suitable to adopt one child, male or female, who is healthy or has special needs, from India. The said

home study Report is on record at page Nos. 109-124 to the Petition.

14. The Report of Psychological Evaluation of the Prospective Adoptive Parents dated 20/01/2023 by the Clinical Psychologist has found that the couple meets all psychological criteria to be fit and loving parents to the Adopted child. The said Report is on record at page Nos. 125-140 to the Petition.

15. The Permission of the Receiving Country as per Article 5/17 of the Hague Convention is on record at page Nos. 141-142 to the Petition.

16. The Child Security undertaking dated 21/02/2023 given by the Prospective Adoptive Mother's parents aged about 55 and 58 years, residing at U.S.A. to look after the said male minor in case of any mishap to the Prospective Adoptive Parents is on record at page Nos. 154-155 to the Petition.

17. The Medical Examination Report of the said male minor dated 17/08/2023 states that "Health Status: Special Need. Overall Observation of the child: Gaurav is a preterm baby born 28 to

30 weeks of gestational age. He was treated for dermatitis with dry skin and scabies. He was admitted to the institution weighing 1.62 kg. He has grown well in the institution; He has mild elevation of hearing thresholds". The Prospective Adoptive Parents have countersigned this Report, which is at page Nos. 159-170 to the Petition.

18. The H.I.V. Report of the said male minor dated 15/06/2023 certifies the case as Non-reactive. This Report is on record at page No. 173 to the Petition.

19. The Post Card Size Photograph of the said male minor is on record at page Nos. 174-176 to the Petition.

20. As regards the change of name, the Prospective Adoptive Parents desire that the said male minor 'Gaurav' be renamed as "Micah Gaurav Buttner".

21. The consent, willingness and undertaking of the Prospective Adoptive Parents states that they are willing to adopt the said male minor. 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.177-182 to the Petition.

22. The undertaking dated 01/11/2023 of the Authorized Foreign Adoption Agency (AFAA) “America World Adoption”, Virginia, USA to provide follow-up Reports of the child and make alternative arrangements in case of disruption of the adoptive family is on record at page Nos. 183-185 to the Petition.

23. The Power of Attorney dated 03/12/2023 duly executed by the Prospective Adoptive Parents in favour of the Petitioner institution is on record at page Nos. 186-187 to the Petition.

24. 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.

25. Mr. O. Hareendran, Scrutiny Officer has tendered Report/Representation of Indian Council of Social Welfare dated 18th

April 2024, which is taken on record and marked “X” for identification.

26. Having considered the material on record as well as the Report of the Scrutiny Officer marked X, I am of the view that it would be in the interest of the said male minor that he is adopted by the Proposed Adopters.

27. 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

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

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."

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

29. 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 Gaurav Buttner** born on 08/08/2022 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 Gaurav Buttner** 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 ‘Gaurav’ to “**Micah Gaurav Buttner**”.*
- (d) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor **Micah Gaurav Buttner** born on 08/08/2022 and showing the proposed adopters as Parents.*
- (e) That the Proposed Adopters may be granted leave to remove the said minor **Micah Gaurav Buttner** 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.”*

30. It is directed that the Petitioner institution shall

obtain a further undertaking from the Adoptive Parents that they shall not give the said male minor child in further adoption without prior leave of the Court. Once this undertaking is obtained, the same shall be filed on record of this Court.

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

32. The present Foreign Adoption Petition is accordingly, disposed of.

33. There shall be no order as to costs.

[R.I. CHAGLA J.]

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