

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. 2 OF 2024
WITH
JUDGE'S ORDER NO. 2 OF 2024

Janani Ashish Charitable Trust ...Petitioner

And

Manuel Gomez Collantes & Anr. ...Proposed Adopters

Mr. Rakesh K.L. Kapoor for the Petitioners.

Mr. O. Hareendran, Scrutiny Officer present.

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

CORAM : R.I. CHAGLA J

DATE : 4 January 2024

ORDER :

1. By this Foreign Adoption Petition the Petitioner and the Proposed Adopters are seeking adoption of the female minor Anamika (“**the said female minor**”) born on 11th September 2019.

2. The said female minor was found abandoned by the

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Shantinagar Police Station, Thane on 19th October 2019 and admitted to the Petitioner institution on the same day. Thereafter, the said female minor was presented before the Child Welfare Committee (CWC), Thane on 22nd October 2019 and her safe custody was given to the Petitioner Institution as per their order dated 22nd October 2019 under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (“**the said Act**”). The Admission order of the CWC Thane is on record at page No. 18 to the Petition.

3. After making due inquiry under section 38 of the said Act, the CWC, Thane declared the said female minor “Free for Adoption” on 23rd March 2023. The Free for Adoption Order is on record at Page No. 17 to the Petition.

4. The Central Adoption Resource Authority (CARA), New Delhi has issued its No Objection Certificate (dated 8th August 2023) to this adoption as per Adoption Regulations 2017 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.

5. The undertaking/affidavit of the Petitioner institution is on record at page Nos. 19-24 to the Petition.
6. The Proposed Adopters are Spanish Nationals, residing at Barcelona, Spain, both aged about 43 years and have been married for the past 8 years (6th June 2015) with no biological children.
7. The Proposed Adopters Joint Family Photograph and copies of Passport are on record at page Nos. 26 to 32 to the Petition.
8. The Medical Health Reports dated 28th August 2023 of the Prospective Adoptive Parents states, "Do not show any physical, mental or infectious disease (including HIV)". Their HIV and HBsAg Test Reports certify the case as Negative. These reports are on record at Page Nos. 46-73 to the Petition.
9. The Prospective Adoptive Father is working as Chief Technical Officer with Terrats Medical SL, Spain since 6th June 2016 and his income for the year 2023 is Euros 80,000. His Employment and Income Certificate are on record at Page Nos. 74-81 to the Petition.

10. Prospective Adoptive Mother is working as a Ph.D. Researcher with Barcelona Clinic Research Foundation-August Pi I sunyer Biomedical Research Institute and her income for the year 2023 is Euros 27,675. Her Employment and Income certificate are on record at Page Nos. 82-88 to the Petition.

11. The Income Tax Certificates and Proof of Residence are on record at page Nos. 89-146 to the Petition.

12. The childcare arrangement plan declaration by the Prospective Adoptive Parents is on record at page No. 147 to the Petition.

13. The Home Study Report dated 25th May 2023 by the authorities of “Regional Govt. of Catalona’s Institute of Family Fostering and Adoption” Barcelona, Spain is on record, and the said Report has found the Proposed Adopters suitable for adopting a child. The said Report is on record at page Nos. 148-164 to the Petition.

14. The Psychological Report dated 25th May 2023 by

the Psychologist Julia Torres Gil has found that the Proposed Adopters are in a favorable situation to carry out adoption process is on record at page Nos. 165-179 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. 180-188 to the Petition.

16. The child security undertaking dated 30th August 2023 given by the Prospective Adoptive mother's younger brother residing at Barcelona, Spain to look after the said female minor in case of any unforeseen mishap to the Proposed Adopter is on record at Page No. 217-224 to the Petition.

17. The Medical Examination Report dated 25th November 2022 of the said female minor states that she is a happy and content child. Her development and behavior skills are age appropriate. The Proposed Adopters have countersigned this report, which is on record at page Nos. 228-233 to the Petition.

18. The Psychological Test Report dated 15th

November 2022 of the said female minor states that her social quotient is found to be 85 indicating that the said female minor seems to have below average social intelligence. The Proposed Adopters have countersigned this report which is on record at page Nos. 234-236 to the Petition.

19. The H.I.V Report of the said female minor dated 25th November 2020 certifies the case as Negative. This Report can be found at page No.244 to the Petition.

20. The Post Card size photograph of the said female minor is on record at page No. 245 to the Petition.

21. As regards the change of name, the Proposed Adopters' desire that the said female minor 'Anamika' be renamed as "Anamika Gomez Jurado".

22. The Declaration of willingness and undertaking of the Proposed Adopters states that they are willing to adopt the said female minor. They further undertake that they will allow personal visits by the representative of the Authorized Foreign Adoption

Agency (AFAA) for follow-up of the process of the child as required under the Adoption Regulations, which is on record at page Nos. 246-257 to the Petition.

23. The undertaking dated 20th March 2023 of the Authorized Foreign Adoption Agency (AFFA) “ECAI Bal Balika” Badalona, Spain for furnishing post adoption follow-up reports of the child and make alternative arrangements in case of disruption of the adoptive family is on record at page No. 258-261 to the Petition.

24. The General Power of Attorney dated 20th March 2023 duly executed by the Proposed Adopters in favour of the Petitioner institution is on record at page Nos. 262-273 to the Petition.

25. The Petitioner institution’s recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid up to 12th April 2026.

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

22nd December 2023, which is taken on record and marked “X” for identification.

27. 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 female minor, if she is adopted by the Prospective Adopters.

28. 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."

29. Having considered the material on record as well as the Scrutiny Report marked X and the averments in the Petition, a case is made out for grant of relief sought for in the Guardianship Petition. Accordingly, the Foreign Adoption Petition is made absolute in terms of prayer clauses (a) to (e) which read thus:-

- “(a) For the Adoption of the proposed female minor **Anamika Gomez Jurado**, born on 11/09/2019 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 **Anamika Gomez Jurado** and 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 **Anamika** to **Anamika Gomez Jurado**.
- (d) Leave/permission be granted to apply the concern Municipal Authorities to issue Birth Certificate of the said minor **Anamika Gomez Jurado**, born on 11/09/2019 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 **Anamika Gomez Jurado** from the jurisdiction of this Hon’ble Court and to take the said minor to SPAIN or wherever they may *reside in future*.”

30. Judge’s Order is accepted and signed separately.

31. 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.

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

[R.I. CHAGLA J.]