

Kavita S.J.

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

FOREIGN ADOPTION PETITION NO.4 OF 2024
WITH
JUDGE'S ORDER NO.12 OF 2024
IN
FOREIGN ADOPTION PETITION NO.4 OF 2024

Bal Asha Trust

...Petitioner

Versus

1. Isaiah Roberty Hollister,
2. Lauren Marie Hollister

...Proposed Adopters

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

Mr. O Hareendran, Scrutiny Officer for Indian Counsel of Social Welfare present.

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

CORAM : R.I. CHAGLA, J.

DATE : 18TH JANUARY, 2024.

ORDER :

KAVITA
SUSHIL
JADHAV

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1. The Foreign Adoption Petition is filed seeking adoption of female minor Nikita ("the said female minor") born on 20th July, 2022. The biological parent surrendered the said female minor before

the Child Welfare Committee (CWC), Mumbai City-II on 23/08/2022 and the child's safe custody was given to the Petitioner institution on the same day as per the order of the said CWC dated 23/08/2022 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 female minor "Legally Free for Adoption" on 28/10/2022. 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 No Objection Certificate dated 18/09/2023 to this adoption as per Adoption Regulations 2017 and Article 17 (c) of the Hague Convention on the Protection of Children and Co-operation in respect of Inter-country Adoption 1993. The said No-objection Certificate is on record at Page No. 26 to the Petition.

4. The undertaking/affidavit by the Petitioner institution is on record at Page Nos. 20-25 to the Petition.

5. The Prospective Adoptive Parents are American Nationals residing at Washington, U.S.A. aged about 30 and 31 years respectively. They have been married for the past 4 years (14/08/2019) with no biological children. The Proposed Adopters Joint Family Photograph and Copies of Passport are on record at Page Nos. 27-33 to the Petition.

6. The Medical Report dated 09/12/2022 of the Prospective Adoptive Parents states that both have shown no symptom of a contagious or fatal disease and is fit to adopt a child. Their HIV Test Reports certify the case as Negative. The said Reports are at Page Nos. 41-49 to the Petition.

7. The Prospective Adoptive Father is working as a Pastor with Life Center since 01/07/2016 and his annual salary is \$56,972. His Employment & Income certificate is on record at Page No. 50-52 to the Petition.

8. Prospective Adoptive Mother is working as a Teacher at Central Valley School District since 01/09/2014 and her annual base salary is \$73,657. Her Employment & Income certificate is on record at Page No. 53-55 to the Petition. The Income Tax Returns, Financial

Declaration and Proof of Residence are on record at Page Nos. 56-79 to the Petition. The Childcare Plan undertaking of the Prospective Adoptive Parents is on record at Page No. 80-81 to the Petition.

9. The Home Study Report dated 13/11/2022 of the authorities of "Agape Adoptions", Washington, USA is on record and the Report has found the Prospective Adoptive Parents suitable to adopt a child. The said Home Study Report is at Page Nos. 82-100 to the Petition.

10. The Psychiatric Evaluation Reports of the Prospective Adoptive Parents dated 02/08/2022 & 25/08/2022 by the authorities of MultiCare, Rockwood Behavioral Health at Spokane Valley have found the couple suitable to adopt a child. The said Report is at Page Nos. 101-112 to the Petition. The Permission of the Receiving Country as per Article 5/17 of the Hague Convention is on record at Page Nos. 113-118 to the Petition.

11. The Child Security undertaking dated 07/08/2023 given by the Prospective Adoptive Parents best friends residing at Washington, USA to look after the said female minor in case of any mishap to the Prospective Adoptive Parents is on record at Page No. 134-135 to the

Petition.

12. The Medical Examination Report of the said female minor dated 07/01/2023 states that “Health Status: Special Need. Overall Observation of the child: Nikita was born to a HIV seropositive mother. She is a pre-term baby (32 weeks) and Syp Nevirapine was continued till 6 weeks and Syp clotrimazole started at 8 weeks. Her HIV 1 Real Time PCR dated 24/08/2022 showed below detection limit and a second HIV PCR done 4 months later on 03/01/2023 was negative; thus indicating that she is NOT infected with HIV. She was admitted to the institution weighing 2.45 kg. She has grown well in the institution”. The Prospective Adoptive Parents have countersigned this Report, which is at Page Nos. 140-162 to the Petition.

13. The Report of Psychological Testing dated 06/01/2023 of the said female minor states that the said female minor Nikita is pleasant child. Her overall DQ is 40%, which is suggestive of severe developmental delay. She will require intervention and lots of personal attention and stimulation in all areas of development. The Prospective Adoptive Parents have countersigned this Report alongwith Occupational Therapy Report, which are at Page Nos. 163-

170 to the Petition.

14. The latest H.I.V.1 RNA Detection Report of the said female minor dated 03/01/2023 certifies the case as Not Detectable. This Report is on record at Page No. 176 to the Petition.

15. The Post Card Size Photograph of the said female minor is on record at Page No.179 to the Petition.

16. As regards the change of name, the Prospective Adoptive Parents desire that the said female minor 'Nikita' be renamed as "Zara Lynn Nikita Hollister".

17. The Child approval Letter and undertaking of the Prospective Adoptive Parents is on record and it 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) during post-adoption follow up. The said declaration is at Page Nos.180-183 to the Petition.

18. The Undertaking dated 16/05/2023 of the Authorized Foreign Adoption Agency (AFAA) "Children's Home Society of Minnesota", U.S.A. to provide follow-up reports of the said female

minor and make alternative arrangements in case of disruption of the adoptive family is on record at Page No. 184-187 to the Petition.

19. The Power of Attorney dated 03/07/2023 duly executed by the Prospective Adoptive Parents in favour of the Petitioner institution is on record at Page Nos. 188-189 to the Petition.

20. 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.

21. The Report of Mr. O. Hareendran, Scrutiny Officer dated 10th January, 2024 has been tendered and taken on record and marked 'X' for identification.

22. Having considered the material on record and the Report of the Scrutiny Officer marked 'X', it would be in the interest of the said female minor child, if she is adopted by the Proposed Adopters.

23. It is necessary to note that the Division Bench of this Court in *Nisha Pradeep Pandya @ Nisha Amit Gor and Anr. Vs. Union of India and Ors.*¹ concerning challenge raised to the Juvenile Justice

¹ W.P.(L) No.32065 of 2022

(Care and Protection of Children) Amendment Act, 2021, passed an interim order dated 10th January, 2023. The relevant portion of the 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.”

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

25. 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 Zara Lynn Nikita Hollister born on 20/07/2022 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 and having all parental rights, privileges and responsibilities over the said female 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 'Nikita' to "Zara Lynn Nikita Hollister".

(d) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor Zara Lynn Nikita Hollister born on 20/07/2022 and showing the proposed adopters as Parents.

(e) That the Proposed Adopters may be granted leave to remove the said minor Zara Lynn Nikita Hollister 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.

26. It is directed that the Petitioner Institution shall obtain a further undertaking from the Adoptive Parents that they will 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.

27. The Judges Order is accepted and signed separately.

28. The Foreign Adoption Petition is accordingly disposed of.

29. There shall be no orders as to costs.

[R.I. CHAGLA, J.]