

Sharada

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 2024

WITH

JUDGE'S ORDER NO. 96 OF 2024

IN

FOREIGN ADOPTION PETITION NO. 18 OF 2024

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Adharashram Through Rahul M. Jadhav

..Petitioner

And

Simone Pertegato, and Milena Pogni

..Proposed Adopter

Mr. Rakesh Kapoor i.by Mr. Rakesh K. Kapoor & Co, Advocate for
the Petitioner.

Ms. Vandana Chincholkar, Scrutiny Officer, ICSW present.

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

CORAM : R.I. CHAGLA, J.

DATE : 24TH JULY 2024

ORDER :

1. By this Foreign Adoption Petition the Petitioner and the
Proposed Adopter have sought adoption of male minor Sarthak

(“**the said male minor**”) born on 09/01/2023. The biological mother surrendered the said male minor before the Child Welfare Committee (CWC), Nashik on 09/03/2023 and the child’s custody was given to the Petitioner institution as per the order of the CWC, Nashik dated 09/03/2023 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 Nos.18 to the Petition.

2. After making due inquiry under Section 38 of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, the CWC, Nashik declared the said male minor “Legally Free for Adoption” as on 10/05/2023. The Free for Adoption Certificate is on record at page Nos.17 to the Petition.

3. The Central Adoption Resource Authority (CARA), New Delhi has issued No Objection Certificate dated 21/03/2024 to this adoption as per Adoption Regulations 2022 and Article 17 (c) of the Hague Convention on the Protection of the Children and Cooperation in respect of Inter-country Adoption 1993. The said No-objection Certificate is on record at page No.24 to the Petition.

4. The undertaking / affidavit by the Petitioner institution is on record at page Nos.19-23 to the Petition.
5. The Proposed Adopters are Italian nationals, residing at Vicenza, Italy aged about 51 and 44 respectively. They have been married for the past 12 years (05/05/2012) with no biological children.
6. The Proposed Adopters Joint Family Photograph and Copies of Passport are on record at page Nos.25-37 to the Petition.
7. The Medical Report dated 04/10/2023 of the Proposed Adopters states “That they are in good physical and mental health”. Their HIV and HBsAg Test Reports certify the case as Negative. These reports are on record at page Nos.49-64 to the Petition.
8. The Prospective Adoptive Father is working as a Branch Director with Uni Credit S.P.H. Milano, Italy since 03/09/2001 and his income for the year 2022 was Euro 47,655. His Employment and Income Certificate is on record at page Nos.69 and 75-76 to the Petition.

9. The Prospective Adoptive Mother is working as a Clerk with Proveco S.R.L. Vicenza, Italy since 1999 and her income for the year 2022 was Euro 27,531. Her Employment and Income Certificate is on record at page Nos.71 and 77-78 to the Petition.

10. The Supportive financial documents and Residence Certificate are on record at page Nos.81-100 to the Petition.

11. The Childcare Arrangements statement from the Prospective Adoptive Parents is on record at page Nos.101-106 to the Petition.

12. The Home Study Reports dated 30/11/2023 by the Authorities of “International Action”, Italy have found the Prospective Adoptive Parents suitable to adopt a child. The said Home Study Reports are on record at page Nos.107-114 to the Petition.

13. The Psychological Evaluation Report of the Prospective Adoptive parents dated 30/11/2023 by Dr. Margherita Cipone, Psychologist and Psychotherapist is on record and the report has recommended the couple for the adoption of an Indian Child. This report can be found at page Nos.115-118 to the Petition.

14. The Permission of the Receiving Country as per Article 5/17 of the Hague Convention is on record at page Nos.119-128 to the Petition.

15. The Child Security Undertaking dated 23/05/2024 of the Prospective Adoptive Mother's brother and sister-in-law, residing at Vicenza, Italy to take care of the said male minor in case of any unforeseen mishap to the Prospective Adoptive Parents is on record at page Nos.151-152 to the petition.

16. The Medical Examination Report of the said male minor dated 12/07/2023 states "Health Status of the child: Special Need- History of Birth Asphyxia and Hypothyroidism". The Prospective Adoptive Parents have countersigned this Report which is at page Nos.155-173 to the Petition.

17. The H.I.V. Report of the said male minor dated 02/04/2024 certifies the case as Non Reactive. This report is on record at page No.177 to the Petition. The Post Card Size Photograph of the said male minor is on record at page No.178 to the Petition.

18. The Letter of Acceptance 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 reports of the child is on record at page Nos.179-187 to the Petition.

19. The undertaking dated 30/11/2023 of the Authorized Foreign Adoption Agency (AFAA) "International Action APS", Italy to provide follow-up reports of the said male minor and make alternative arrangements in case of disruption of the adoptive family is on record at page Nos.188-191 to the Petition.

20. The Special Power of Attorney dated 03/08/2023 duly executed by the Prospective Adoptive Parents in favour of the Petitioner institution is on record at page Nos.192-195 to the Petition.

21. 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.

22. Ms. Vandana Chincholkar, Scrutiny Officer who is present has tendered Report / Representation of Mr. O. Hareendran, Scrutiny Officer from the Indian Council of

Social Welfare (ICSW) dated 15/07/2024 which is taken on record and marked 'X' for identification.

23. Having considered the material on record as well as the Report of the Scrutiny Officer marked 'X', in my view, it would be in the interest of the said male minor that he is adopted by the Proposed Adoptive Parents.

24. 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.

(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."*

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

26. 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 male minor Sarthak Pertegato, born on 09/01/2023 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 minor Sarthak Pertegato and having all parental rights, privileges and responsibilities over the said minor now in the care and custody of the Petitioner institution Adharashram, 491/6 Gharpure Ghat, Nashik-422 002, Maharashtra

(c) That the proposed adopters be allowed to change the name of the said minor 'Sarthak to "Sarthak Pertegato"'

(d) Leave/permission be granted to apply the concern Municipal Authorities to issue Birth Certificate of the said minor Sarthak Pertegato, born on 09/01/2023 and stating thereon that the Proposed Adopters as Parents of the said minor.

(e) That the Proposed Adopters may be granted leave to remove the said minor Sarthak Pertegato from the jurisdiction of this Hon'ble Court and to take the said minor to ITALY or wherever they may reside in future".

27. It is directed that the Petitioner institution shall obtain a further undertaking 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.

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

29. The present Foreign Adoption Petition is accordingly disposed of.

30. There shall be no order as to costs.

[R.I. CHAGLA, J.]

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