

Sharada

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

SHARADA
RANGNATH
WAHULE

Digitally signed by
SHARADA
RANGNATH
WAHULE
Date: 2024.09.10
11:20:48 +0530

FOREIGN ADOPTION PETITION NO.20 OF 2024
WITH
JUDGE'S ORDER NO.111 OF 2024

IN

FOREIGN ADOPTION PETITION NO.20 OF 2024

Vatsalya Trust, Mumbai

...Petitioner

And

Mr. Brett Allen Magnuson
Mrs. Danielle Nichol Magnuson

...Proposed Adopters

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

Ms. Sangeeta A. Nagpal, Scrutiny Officer, ICSW present.

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

CORAM : R.I. CHAGLA, J.

DATE : 6TH SEPTEMBER 2024

ORDER :

1. By this Foreign Adoption Petition the Petitioner and the Proposed Adopters have sought adoption of female minor Manali (“the said female

minor”) born on 31/07/2019. The biological mother relinquished the said female minor to the Child Welfare Committee, (CWC) Mumbai Suburban District on 27/09/2019 and the child’s custody was given to the Petitioner institution on the same day as per the order of the said CWC dated 27/09/2019 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.29 to the Petition.

2. After making due inquiry under Section 38 of the said Act, the CWC Mumbai Suburban District, Mumbai declared the said female minor “Legally Free for Adoption” as on 29/11/2019. The Free for Adoption Certificate is on record at page Nos.23-24 to the Petition.

3. The Central Adoption Resource Authority (CARA), New Delhi has issued No Objection Certificate dated 14/05/2024 to this adoption as per Adoption Regulations 2017 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.22 to the Petition.

4. The undertaking / affidavit of the Petitioner institution is on record at page Nos.206-210 to the Petition.

5. The Proposed Adopters are American nationals, residing at Florida, U.S.A. aged about 40 and 25 years respectively. They have been married for the past 12 years (03/03/2012) and have two biological children, a son aged about 9 years and a daughter aged about 7 years respectively. Their birth certificates, health reports and consent letters are on record at page Nos.42-c-42-d, & 158-159 to the Petition.

6. Motivation Letter from the Prospective Adoptive Parents is on record at page No.155 the Petition.

7. The Proposed Adopters' Passport copy and Joint Family Photograph are on record at page Nos.94-95 & 151-152 to the Petition.

8. The Medical Report dated 15/01/2024 of the Prospective Adoptive father states that his health is suitable for raising a child. He had a right knee arthroscopy done on 14/08/2023 and has completely healed from this surgery. The surgery does not impede his ability to parent or continue the adoption process. His HIV and HBsAg Test Reports certify the case as Non Reactive. These Reports are on record at page Nos.51-59 to the Petition.

9. The Medical Report dated 15/01/2024 of the Prospective Adoptive mother states that her health is suitable for raising a child. She

had Kidney surgery in 1999. This surgery does not impede on her ability to parent or continue the adoption process. Her HIV and HbsAg Test Reports certify the case as Non Reactive. These reports are on record at page Nos.62-73 to the Petition.

10. The Prospective Adoptive Father is self-employed, owning and operating “All-Brand-Richard Vacuum Center” since 2009 and earning approximately \$85,000 annually. The Prospective Adoptive Mother is self-employed, owning and operating “Danielle Nichol Photography, LIC” since 2011 and earning approximately \$50,000 annually. As per Income Tax Return 2022 their joint total income is 142,140 US Dollars. The statement of employment status of the Prospective Adoptive Parents and U.S. Individual Income Tax Return 2022 are on record at page Nos.102-107 to the Petition.

11. The Supportive financial documents and Residence Certificate are on record at page Nos.108-120 to the Petition.

13. The Childcare Plan statement from the Prospective Adoptive parents are on record at page Nos.123-124 to the Petition.

14. The Home study Reports dated 20/12/2022 and 18/12/2023 by the authorities of “Lifeline Children’s Services” Florida, U.S.A. have found

the Prospective Adoptive Parents suitable for adopting a child of either gender between the age group of -5 from India. The said Home Study Reports are at page Nos.127-150 to the Petition.

15. The Psychological Evaluation Reports dated 04/04/2022 and 15/01/2024 of the Authorities of Counseling and Assessment Center of Brevard Inc. Florida have found the couple suitable for adopting a child.. These reports are on record at page Nos.77-90 to the Petition.

16. The Permission of the Receiving Country as per Article 5/17 of the Hague Adoption Convention is on record at page Nos.32-33 to the Petition.

17. The Child Security Undertaking dated 01/04/2024 of the Prospective Adoptive Parents friends residing at Florida, U.S.A. to take care of the child in the case of any unforeseen mishap to the Prospective Adoptive Parents is on record at page Nos.160-162 to the Petition.

18. The Medical Examination Report of the said female minor dated 29/08/2022 states that “Health Status of the child: Special Need. Overall Observation of the child: Since last three years, child’s mental and physical development is below normal for her age. Her latest medical report dated 05/03/2024 states “Autism Spectrum Disorder with speech delay with SQ

51 with severe acute malnutrition”. The Prospective Adoptive Parents have countersigned this Report, which is on record at page Nos.168-192 to the Petition.

19. The Medical Letters from the Prospective Adoptive Parents and UAB Medicine Pediatrics, Alabama are on record at page Nos.194-196 to the Petition.

20. The H.I.V. Report of the said female minor dated 19/03/2022 certifies the case as Negative. This Report is on record at page No.192-a to the Petition.

21. The Letter of acceptance and undertaking of the Prospective Adoptive Parents states that they are willing to adopt the said female minor born on 31/07/2019. 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.159-c & 200-202 to the Petition.

22. The Undertaking dated 25/01/2024 of the Authorized Foreign Adoption Agency (AFAA) “Lifeline Children’s Services” Florida, U.S.A. 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.197-

199 to the Petition.

23. The Special Power of Attorney dated 10/06/2024 duly executed by the Prospective Adoptive Parents in favour of the Petitioner institution is on record at page Nos.221-223 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 05/07/2025.

25. Mr. O. Hareendran, Scrutiny Officer has tendered the Report / Representation from the Indian Council of Social Welfare (ICSW) dated 12/08/2024 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 minors that they are 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

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

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.”

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 adoption of the Proposed female minor baby **MANALI @ MANALI AMELIA MAGNUSON**” born on 31st July 2019 by Proposed Adopters under Juvenile Justice Act*

(b) *For declaring the Proposed Adopters as Adoptive Parents of the said minor and shall have all parents rights, privileges and responsibilities over the said minor girl **MANALI AMELIA MAGNUSON***

(c) *That the Proposed Adopters be granted permission to change the name of minor MANALI to **MANALI AMELIA MAGNUSON***

(d) *That the concerned Municipal Authority / Birth Certificate issuing Authority may be directed to issue Birth Certificate in the name of the said minor **MANALI AMELIA MAGNUSON** , born on 31st July 2019 and stating thereon that the Prospective Adoptive Parents as the Parents of the said minor.*

(e) *That the Proposed Adopters be granted leave to remove the said minor baby **MANALI AMELIA MAGNUSON** from the jurisdiction of this Hon’ble Court and to take the said minor to USA or wherever they may reside in future”.*

30. It is directed that the Petitioner institution shall obtain further

undertaking from the Adoptive Parents that they shall not give the said female minors 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 Judge's Order is accepted and separately signed.
32. The Foreign Adoption Petition is accordingly, disposed of.
33. There shall be no orders as to costs.

[R.I. CHAGLA, J.]

Privacy warning : No part of this order shall be uploaded on any public domain or portal without this Court's express permission.