

Manoj Wakle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
FOREIGN ADOPTION PETITION NO.15 OF 2024
WITH
JUDGE'S ORDER NO.88 OF 2024
IN
FOREIGN ADOPTION PETITION NO.15 OF 2024

Children of the World India Trust ...Petitioner

And

Mr. Giuliano Falcone and ...Proposed
Mrs. Flavia Improta Adopters

Mr. Rakesh Kapoor i/by Mrs. Rakesh K. L. Kappor & Co. for the
Petitioner.

Mr. O. Hareendran, Scrutiny Officer, ICSW present.

Mr. Dilip S. Gurav, Chamber Registrar present.

CORAM : R.I. CHAGLA J

DATE : 19th JUNE, 2024

ORDER :

1. By this Foreign Adoption Petition, the Petitioner and the
Proposed Adopters have sought adoption of the male minor Himagra

(“the said male minor”) born on 28/03/2023. The said male minor was admitted to the Petitioner institution on 20/03/2023 as per the order of the Child Welfare Committee (CWC), Thane dated 28/03/2023 under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (“the said Act”). Thereafter, the biological mother surrendered the said male minor before the said CWC, Thane on 29/03/2023. The Admission Order of the CWC is on record at page No.18 to the Petition.

2. After making due inquiry under Section 38 of the said Act, the CWC, Mumbai City I declared the said male minor “Legally Free for Adoption” on 25/06/2023. The Free for adoption Order and Certificate are on record at page No.17 to the Petition.

3. The Central Adoption Resource Authority (CARA), New Delhi has issued its No Objection Certificate dated 05/03/2024 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.19-24 to the Petition.

5. The Prospective Adoptive parents are Italian Nationals, residing at Napoli, Italy, aged about 41 and 38 years respectively. They have been married for the past 9 years (22/05/2015) with no biological children.

6. The Prospective Adoptive Parents Joint Family Photograph and Copies of Passport are on record at page Nos.26-32 to the Petition.

7. The Health Reports dated 05/04/2024 of the Prospective Adoptive Parents states that, "They do not suffer from any chronic, venereal, contagious or terminal illnesses and do not have any physical or mental condition that would prevent them from caring for a minor. The report further certifies that both were tested Negative to diseases such as HIV and Hepatitis B. These Reports are on record at page Nos.51-60 to the Petition.

8. The Prospective Adoptive Father is a Freelancer in software Production and owns a firm known as "Giuliano Falcone" since May, 2013 and his income for the year 2022 was Euro 14,200 (=Rs.12,53,999/-). He also works as a Software Production Engineer with the Company SEO Cube Agency Srl, Italy since 01/12/2020 and his gross remuneration for the year 2022 was approximately Euro

21,137.07 (=Rs.18,90,288.17/-). His Income Employment Certificates are on record at page Nos.61-84 to the Petition. The Prospective Adoptive Mother is a Homemaker.

9. The Certificate of Residence is on record at page Nos. 85-90 to the Petition.

10. The Home Study Report dated 22/02/2023 by the authorities of “Associazione Ariete ONLUS”, Napoli, Italy has found the Prospective Adoptive Parents suitable for adopting a child. The said Home Study Report is on record at page Nos.91-108 to the Petition.

11. The Psychological Evaluation Report of the Prospective Adoptive Parents dated 24/06/2021 by the authorities of Territorial Social Service Center, Bangnoli-Fuorigrotta, Italy, has recommended the couple for the adoption of a child. The said Report is on record at page Nos.109-123 to the Petition.

12. The Permission of the Receiving Country as per Article 5/17 of the Hague Convention is on record at page Nos. 124-128 to the Petition.

13. The child security undertaking dated 21/02/2024 given by the Prospective Adoptive Mother's sister and brother-in-law

residing at Pistoia, Italy to look after the said male minor in the event of any unforeseen mishap to the Proposed Adopters is on record at Page Nos. 154-155-C to the Petition.

14. The Medical Examination Report of the said male minor dated 26/06/2023 states, “Health Status: Special Needs child-left ear moderate hearing loss and right ear mild hearing loss. Overall observation of the child: Age appropriate Development”. The Prospective Adoptive Parents have countersigned this Report, which is on record at page Nos. 160-168 to the Petition.

15. The H.I.V. report of the said male minor dated 01/06/2023 certifies the case as Non Reactive. The said Report is on record at page No. 170 to the Petition.

16. The Post Card Size Photograph of the said male minor is on record at page No. 171 to the Petition.

17. As regards the change of name, the Prospective Adoptive Parents desire that the said male minor **‘Himagra’** be renamed as **“Hima Alessandro Falcone”**.

18. The Declaration of Willingness and Undertaking of the Prospective Adoptive Parents is on record at page Nos. 172-189 to the Petition. It states that they are willing to be appointed and declared

as the Adoptive Parents of 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.

19. The undertaking dated 12/09/2023 of the Authorized Foreign Adoption Agency (AFAA) “Associazione Ariete ONLUS” 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. 190-195 to the Petition.

20. The Power of Attorney dated 26/09/2023 duly executed by the Proposed Adopters in favour of the Petitioner institution is on record at page Nos. 196-205 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. Mr. O. Hareendran, Scrutiny Officer has tendered the Report/Representation from the Indian Council of Social Welfare (ICSW) dated 12/06/2024 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 which is marked 'X', I am of the view that it would be in the interest of the said male minor child that he is adopted by the Proposed Adopters.

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 **Hima Alessandro Falcone** born on 24/03/2023 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 said minor **Hima Alessandro Falcone**, having all parental rights, privileges and responsibilities over the said minor now in the care and custody of Children of the World India Trust, Vishwabalak Kendra, Plot No. 9 & 10, Sector- 12 Nerul, Navi Mumbai – 400 706.*
- (c) *That the proposed adopters be allowed to change the name of the said minor Himagra to” **Hima Alessandro Falcone**”.*
- (d) *Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor **Hima Alessandro Falcone** born on 24/03/2023 and showing the proposed adopters as Parents.*
- (e) *That the Proposed Adopters may be granted leave to remove the said minor **Hima Alessandro Falcone** from the jurisdiction of this Hon’ble Court and to take the said minor to ITALY or wherever they may reside in future.”*

27. The Judge’s Order is accepted and signed separately.

28. It is directed that the Petitioner shall obtain a further undertaking from the Adoptive Parents that they shall not give the said male 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.

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

30. There shall be no orders as to costs.

[R.I. CHAGLA, J.]

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without this Court's express permission.