

Sharada

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

FOREIGN ADOPTION PETITION NO. 16 OF 2024

WITH

JUDGE'S ORDER NO. 90 OF 2024

IN

FOREIGN ADOPTION PETITION NO. 16 OF 2024

**Bal Asha Trust, Through Sunil Kumar Arora, ...Petitioner
Executive Director.**

And

**Manuel Mior, Italian National and Chudia ...Proposed Adopter
Vianello, Italian National.**

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

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

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

Mr. Sunil Arora-Executive Director Present.

Ms. Angel Aloor – Social Worker along with Kavita Khatun minor present
in Chamber,

CORAM : R.I. CHAGLA, J.

DATE : 10th July 2024

ORDER :

1. By this Foreign Adoption Petition the Petitioner and the Proposed Adopters have sought adoption of female minor Kavita Khatun Gazlu Shaikh (“**the said female minor**”) born on or about 25/07/2023. The said female minor was found abandoned by Nagpada Police Station Mumbai.

2. The said female minor had prior to her admission to the Petitioner institution on 10/05/2022 upon her being abandoned, had been admitted to Maharashtra State Women’s Council “Asha Sadan”, Mumbai from 08/09/2016 to 27/04/2019 and thereafter to Bombay Vigilance Association “Balikashram”, Mumbai from 27/04/2019 to 10/05/2022. The said female minor had been produced before the CWC on 11/05/2022 and by order of same date, the CWC, Mumbai City-I recognized that admission 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.

3. 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” as on 19/06/2022. The Free for Adoption Certificate is on record at page Nos.17-18 to the Petition.

4. The Central Adoption Resource Authority (CARA), New Delhi has issued No Objection Certificate dated 28/03/2024 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 found at Page No.26 to the Petition.

5. The undertaking / affidavit by the Petitioner institution is on record at page Nos.21-25 to the Petition.

6. The Proposed Adoptive Parents are Italian Nationals, residing at Tagliamento, Italy, aged about 52 and 48 years respectively. They have been married for the past 13 years (02/09/2011) with no biological children.

7. The Proposed Adopters Joint Family Photograph, Copies of Passport are on record at page Nos.27-39 to the Petition.

8. The Medical Report dated 03/01/2024 of the Prospective Adoptive Parents states that “They are in good and strong health”. Their HIV Test Reports Certify the case as Negative. These Reports are on record at Page Nos.56-80 to the Petition.

9. The Prospective Adoptive Father is self employed - Financial Consultant. His income for the year 2022 was Euro 90,471. His Income Certificate is on record at page Nos.97-98 to the Petition.

10. The Prospective Adoptive mother is working as a Clerk with the Municipality of Casarsa Della Delizia, Italy and her income for the year 2022 was Euro 27,210/-. Her Employment and Income Certificate are on record at page Nos.87& 99 and 100 to the Petition.

11. The Supportive financial documents, Declaration of personal conditions and Certificate of Residence are on record at page Nos.103-125 to the Petition.

12. The Childcare Arrangement Plan declaration of the Prospective Adoptive mother is on record at page Nos.126-132 to the Petition.

13. The Home study Reports dated 05/12/2022 by the authorities of “International Action”, Italy is on record and the Report has found the Prospective Adoptive Parents suitable for adopting a child. The said Home Study Report is at page Nos.133-140 to the Petition.

14. The Psychological Evaluation Report of the Prospective Adoptive Parents dated 05/12/2022 by Dr. Margherita Cipone, Psychologist and

Psychotherapist has found the Prospective Adoptive Parents suitable to adopt the child. The said report is on record at page Nos.141-144 to the Petition.

15. The Permission of the Receiving Country as per Article 5/17 of the Hague Adoption Convention is on record at page Nos.145-162 to the Petition.

16. The Child Security Undertaking dated 22/05/2024 given by the Prospective Adoptive Mother's sister residing at Italy to look after the said female minor in the event case of any mishap to the Prospective Adoptive Parents is on record at page Nos.192-193-C to the Petition.

17. The Medical Examination report of the said female minor dated 28/07/2023 states that "Health Status: Normal. Over all observation of the child: Kavita is a pleasant girl who is in good physical and mental health". The Prospective Adoptive Parents have countersigned this Report, which is at page Nos.196-202 to the Petition.

18. The Report of Psychological Testing of the said female minor dated 08/12/2023 states that she has average intellectual functioning and average social functioning. Her language, speech and hearing report of April 2023 states that "Kavita is having no significant delay in speech and

language milestones acquisition”. The Prospective Adoptive Parents have countersigned these reports, which is at page Nos.203-207 to the Petition.

19. The H.I.V. Report of the said female minor dated 02/06/2023 certifies the case as Non Reactive. This Report is on record at page No.211 to the Petition. The Post Card Size Photograph of the said female minor is on record at page No.212 to the Petition.

20. The consent, willingness and Undertaking of the Prospective Adoptive Parents states that they are willing to adopt the said female minor. They further undertake they will allow personal visits by the Representative of the Central Authority during post-adoption follow up. The said declaration is on record at page Nos.213-221 to the Petition.

21. The Undertaking dated 06/02/2024 of the Authorized Foreign Adoption Agency (AFAA) “International Action APS” Italy to provide follow-up reports and make alternative arrangements in case of disruption of the adoptive family is on record at page Nos.222-225 to the Petition.

22. The Power of Attorney dated 06/02/2024 duly executed by the Prospective Adoptive Parents in favour of the Petitioner institution is on record at page Nos.226-229 to the Petition.

23. 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.

24. Mr. O. Hareendran, Scrutiny Officer has tendered Report / Representation from the Indian Council of Social Welfare (ICSW) dated 08/07/2024 which is taken on record and marked 'X' for identification.

25. 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 female minor to be adopted by the Proposed Adopters.

26. 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."

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

28. 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 minor Kavita Khatun Mior, born on 25/07/2013 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 Kavita Khatun Mior and having all parental rights, privileges and responsibilities over the said 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 'Kavita Khatun Gazlu Shaikh' to "Kavita Khatun Mior".

(d) Leave/ permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said minor Kavita Khatun Mior born on 25/07/2013 and showing the proposed adopters as parents.

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

29. It is directed that the Petitioner institution shall obtain further undertaking from the Adoptive Parents that they shall not give the said female minor 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.

30. The Judge's Order is also separately signed.
31. The Foreign Adoption Petition is accordingly, disposed of.
32. There shall be no orders as to costs.

[R.I. CHAGLA, J.]

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