

Zeenat Pathan

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION
FOREIGN ADOPTION PETITION NO. 28 OF 2024
WITH
JUDGE'S ORDER NO. 152 OF 2024
IN
FOREIGN ADOPTION PETITION NO. 28 OF 2024

Bal Asha Trust

...Petitioner

And

Ms. Isabelle SCHWAB

...Proposed Adopter

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

Mr. O. Hareendran, Scrutiny Officer ICSW present.

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

Ms. Angel Aloor-Social Worker (Bal Asha Trust) of Petitioner a/w Kumari Gaori Thelma Jeanne Schwab-Adoptee present in Chamber.

CORAM : R.I. CHAGLA J

DATE : November 27, 2024

ORDER :

1. By this Foreign Adoption Petition the Petitioner and the Proposed Adopter has sought adoption of the female minor Gauri

Shankar Kumbhar (“**the said female minor**”) born on or about 17/04/2013. The said female minor was found abandoned by Bandra Police Station, Mumbai and admitted to C.C.D.T. Ashray, Mumbai from 03/03/2017 to 05/01/2023. Thereafter the said minor was transferred to the Petitioner institution Bal Asha Trust, Mumbai on 05/01/2023 as per the order of the Child Welfare Committee (CWC), Mumbai City-II dated 05/01/2023 under the provisions of the 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 31/07/2023. 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 its No Objection Certificate (dated 03/05/2024) 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. 27 to the Petition.

4. The undertaking/affidavit of the Petitioner institution is on record at Page Nos. 21-26 to the Petition.

5. The Proposed Adopter is a Spinster, French National, residing at Strasbourg, France aged about 50 years and has no biological children or adopted children.

6. The Prospective Adoptive Parent's Photograph and copy of her Passport are on record at Page Nos. 28-32 to the Petition.

7. The Medical Report dated 26/08/2024 of the Prospective Adoptive Parent states, "No sign of any clinically detectable infection to date, with in particular no contagious tuberculosis". Her HIV and HBsAg Test Report certifies the case as Negative. These reports are on record at Page Nos. 37-44 to the Petition.

8. The Prospective Adoptive Parent is working as a Teacher with Strasbourg Regional Education Authority, France since 01/09/1999 and her monthly gross salary is 4110.52 Euros. Her

Income and Employment Certificate is on record at Page Nos. 45-48 to the Petition.

9. The Income Tax Certificate, Supportive financial documents and Proof of Residence are on record at page Nos. 49-68 to the Petition.

10. The Child Care Arrangement undertaking of the Prospective Adoptive Parent is on record at page Nos. 69-72 to the Petition.

11. The Home Study Report dated 20/09/2024 of the authorities of “Les Enfants de l’Esperance”, France is on record and the report has found the Prospective Adoptive Parent suitable to adopt a child. The said Report is on record at page Nos. 73-80 to the Petition.

12. The Report of Psychological Evaluation of the prospective adoptive parent dated 20/09/2024 by the Psychologist Berengere Doyen is on record and the report has found the Prospective Adoptive Parent suitable to adopt a child. The said Psychological Evaluation

Report is on record at Page Nos. 81-83A to the Petition.

13. The Permission of the Receiving Country as per Article 5/17 of the Hague Convention is on record at page Nos. 84-92 to the Petition.

14. The child security undertaking dated 12/08/2024 given by the Prospective Adoptive Parent's sister, residing at Tallende, France to look after the said female minor in case of any mishap to the Prospective Adoptive Parent is on record at Page Nos. 115-118 to the Petition.

15. The Medical Examination Report of the said female minor dated 28/07/2023 states that "Health Status: Normal. Overall Observation of the Child: Gauri is a pleasant girl who is in good physical and mental health. Her Report is Asymptomatic MT 2TU (10 mm), borderline positive with no clinical signs of TB". The Prospective Adoptive Parent has countersigned this Report along with additional investigation reports, which are on record at Page Nos. 122-149.

16. The Report of Psychological Testing of the said female minor dated 08/06/2023 states that she has average intellectual functioning and social functioning. Her language, speech and hearing report dated 27/06/2023 states that Gauri Shankar Kumbhar has delay in achieving speech and language milestones. She requires speech and language stimulation and requires stimulative and conducive environment and loving family to develop to her full potentials. The Prospective Adoptive Parent has countersigned these reports, which are on record at Page Nos. 150-155 to the Petition.

17. The H.I.V Report of the said female minor dated 12/01/2023 certifies the case as Non-reactive. This Report is on record at Page No.158 to the Petition.

18. The Post Card size photograph of the said female minor is on record at Page No. 159 to the Petition.

19. As regards the change of name, the Prospective Adoptive Parents desire that the female minor 'Gauri Shankar Kumbhar' be renamed as "Gaori Thelma Jeanne SCHWAB".

20. The child Acceptance letter and undertaking of the Prospective Adoptive Parent states that she is willing to adopt the said female minor Gauri Shankar Kumbhar. She further undertakes that she 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. 160-163 to the Petition.

21. The undertaking dated 24/01/2024 of the Authorized Foreign Adoption Agency (AFFA) “Les Enfants de l’Esperance”, France 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 Nos. 164-165 to the Petition.

22. The Power of Attorney dated 17/04/2024 duly executed by the Prospective Adoptive Parent in favour of the Petitioner institution is on record at page Nos. 166-168 to the Petition.

23. The Petitioner institution’s recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid up to 05/05/2025.

24. Mr. O. Hareendran, Scrutiny Officer has tendered Report/Representation of Indian Council of Social Welfare dated 25/11/2024, which is taken on record and marked “X” for identification.

25. Having considered the material on record as well as the Report of Mr. O. Hareendran, Scrutiny Officer marked X, I am of the view that it would be in the interest of the said female minor that she is adopted by the Proposed Adopter.

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:

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

(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 said minor Gaori Thelma Jeanne SCHWAB, born on 17/04/2013 by the proposed adopter under Section 59 (7) of the Juvenile Justice Act, 2015.
- (b) For declaring the Proposed Adopter as Adoptive Parent of the said minor Gaori Thelma Jeanne SCHWAB 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 adopter be allowed to change the name of the minor ‘Gauri Shankar Kumbhar’ to “Gaori Thelma Jeanne SCHWAB”.
- (d) Leave/permission be granted to apply the concerned Municipal Authorities to issue Birth Certificate of the said female minor Gaori Thelma Jeanne SCHWAB born on 17/04/2013 and showing the proposed adopter as Parent.
- (e) That the Proposed Adopter may be granted leave to remove the said minor Gaori Thelma Jeanne SCHWAB from the jurisdiction of this Hon’ble Court and to take the said minor to FRANCE or wherever she may reside

in future.”

29. Judge’s Order is accepted and signed separately.

30. It is directed that the Petitioner will obtain further undertakings from the proposed adopter that she will 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.

31. The Foreign Adoption Petition is accordingly disposed of. There shall be no order as to costs.

[R.I. CHAGLA J.]

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