

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

FOREIGN ADOPTION PETITION NO. 4 OF 2025
WITH
JUDGE'S ORDER NO.8 OF 2025
IN
FOREIGN ADOPTION PETITION NO. 4 OF 2025

MAHARASHTRA STATE WOMEN'S COUNCIL)
ADOPTION GROUP)...PETITIONER

AND

1) BRIAN JIFFREY HERRING)
2) STEPHANIE WHITT HERRING)...PROPOSED
ADOPTIVE PARENTS

Ms.Dipal S. Mehta, Advocate for the Petitioner.

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

Mr.Dilip Gurav, Chamber Registrar, present.

Mrs.Ujwala Ashtankar, Social Worker, present.

Ms.Hannah March, Social Worker, through Video Conferencing.

Mr.Brian J. Herring and Ms.Stephanie Whitt Herring, Proposed
Adoptive parents through Video Conferencing.

CORAM : ABHAY AHUJA, J.

DATE : 30th JANUARY 2025

PC. :

1. This Foreign Adoption Petition by the Petitioner seeks adoption of
a male minor Sarvesh born on 28th November, 2022. The male minor

Sarvesh was admitted to Asha Sadan Children's Home, Mumbai on 16th December 2022 as per the order dated 16th December 2022 of the Child Welfare Committee (CWC), Mumbai City-I, under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (the "said Act") for primary care and protection. On 19th December, 2022, the biological minor mother executed a Deed of Surrender before the CWC for the said minor's further rehabilitation. The Transfer order of the CWC is on record at Exhibit C to the Petition.

2. Ms.Mehta, learned Counsel, appearing for the Petitioner has taken me through the various approvals and reports. Ms.Mehta has also tendered today the true copy of the latest Development Assessment Report dated 22nd January 2025 and Physiotherapist Report dated 2nd September 2024 of the minor which is taken on record and marked "X" for the purposes of identification. Mrs.Ujwala Ashtankar, Social Worker, attached to the Petitioner group is present along with Sarvesh and has submitted that earlier Sarvesh had been suffering from Tuberculosis (TB) and was being treated for the same but now the Anti T.B. regimen is over. It is submitted that these developments have also been communicated to the Prospective Adoptive Parents who have accepted and acknowledged by signing the same.

3. I have heard Ms.Dipal S. Mehta and also perused the various approvals and reports annexed to the Petition.

4. After making due inquiry under Section 38 of the said Act, the CWC, Mumbai City-I declared Sarvesh “Legally Free for Adoption” on 17th March 2023. The Free for Adoption Certificate is on record at Exhibit C-1 to the Petition.

5. The Central Adoption Resource Authority (“CARA”), New Delhi has issued its No Objection Certificate dated 6th December 2024 to this Adoption as per Adoption Regulation 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 at Exhibit D to the Petition.

6. The Prospective Adoptive Parents are American nationals, residing at South Carolina, United State of America (“U.S.A.”) aged about 48 and 41 years respectively. They have been married for the past 11 years (29th June, 2013) with two biological children – one son aged about 9 years and one daughter aged about 6 years respectively. Their Medical certificates, consent letters and Birth certificates are on record at Exhibit A-10, Exhibit A-11 and Exhibit A-13 respectively to the Petition. The prospective adoptive parents joint family photograph is on record at Exhibit A-15 to the Petition and copies of passports are on record at Exhibit A-2 to the Petition.

7. The Medical report of the proposed adoptive father dated 16th September, 2024 is on record and it states that he does not have any unfavourable physical, mental or psychological factors that might affect the upbringing of a child. The Medical report dated 17th October 2024 of Atrium Health states that he has fully recovered from his surgical history including knee surgery and spine surgery and that he is fully able to parent and has no restrictions and is under medication. The said reports are on record at Exhibit A-8.

8. The Medical report of the proposed adoptive mother dated 16th September, 2024 is on record and it states that she does not have any unfavourable physical, mental or psychological factors that might affect the upbringing of a child. The Medical report dated 17th October 2024 of Atrium Health states that she is fully recovered from her previous surgeries including c-section and sinus surgery and is fully able to parent and has no restrictions and is under medication. The said reports are on record at Exhibit A-9.

9. The prospective adoptive parents and their biological children's HIV and HbsAG test reports certify the case as non-reactive. These reports are on record at Exhibit A-14 to the Petition.

10. The Motivation letter from the Prospective Adoptive Parents is on record at Exhibit A to the Petition.

11. The Undertaking Affidavit by the Petitioner Institution is on record at Exhibit B to the Petition.

12. The Undertaking from Lifeline Children's Services, the concerned Authorized Foreign Adoption Agency ("AFAA") is on record at Exhibit M-1 to the Petition.

13. The Prospective Adoptive father is working as a Social Studies Teacher with the Clover School District at Oakridge Middle School since August 2019 and his anticipated income for the year 2024 is USD 70,425. The Prospective Adoptive father's Employment and Income certificate is on record at Exhibit J-1 to the Petition.

14. The Prospective Adoptive mother is working as an Instructor of Mathematics with Winthrop University since 15th August 2015 and her anticipated income for the academic year 2024-25 is \$53,707. The Prospective Adoptive mother's Employment and Income certificate is on record at Exhibit J-2 to the Petition.

15. The joint U. S. Individual Income Tax Returns 2021, 2022 and 2023 of the Prospective Adoptive parents are on record at Exhibit J to the Petition. Their joint total income for the year 2023 as per U.S. Individual Income Tax Return 2023 is \$117,149. The proof of residence is at Exhibit A-3 to the Petition and bank references are on record at Exhibit J-3 to the Petition.

16. The Childcare Arrangement Letter of the prospective adoptive parents is on record at Exhibit J-5 to the Petition.

17. The Home study report dated 16th August, 2022, by the authorities of Lifeline Children's Services, South Carolina, U.S.A., is on record and the report has found the prospective adoptive parents suitable for adopting a child of either gender aged between the age group of 0-4 years with medical special needs. The said Home study report is on record at Exhibit H to the Petition.

18. The psychological evaluation reports of the prospective adoptive parents dated 3rd June 2022 and updated report dated 12th September 2024 by the authorities of Genesis Clinical Services, North Carolina,

U.S.A., are on record and it states that the prospective adoptive parents are suitable for adopting a child. The said reports are on record at Exhibits H-2 and H-3 respectively to the Petition.

19. The permission of the Receiving Country as per Article 5 of the Hague Convention is on record at Exhibit I to the Petition.

20. The child security undertaking dated 16th December 2024 of the prospective adoptive mother's brother and sister-in-law residing at California, U.S.A. to take care of the said minor in the event of any unforeseen mishap to the prospective adoptive parents is on record at Exhibit-K to the Petition.

21. The medical examination report dated 27th February 2024 of Sarvesh records the health status of the child as a child of special needs. The overall observation of the child is stated to be that the child has multiple medical issues : (a) he is on treatment for Tuberculosis, (b) he has severe Hypotonia resulting in delayed physical milestones, (c) his speech development is delayed. He also has mild autistic features with DQ 57.14 and Vitamin D3 deficiency with anemia. The report further records that for Tuberculosis the child received DSTB

Regimen (modified) from 1st September 2023 to 1st March 2024 (6 months). The prospective adoptive parents have countersigned this report along with the additional assessment reports which are on record at Exhibit F-1 to the Petition.

22. A separate Acceptance letter dated 15th September 2024 of special needs child from the prospective adoptive parents and a letter from the Adoption and Foster Care Clinic, Alabama, U.S.A., are on record at Exhibit A-1 to the Petition.

23. The HIV report of the said male minor dated 3rd February 2024 certifies the case as non reactive. The said report of Sarvesh is on record at Exhibit-F-3 to the Petition. The post card size photograph of Sarvesh is on record at Exhibit G to the Petition.

24. The Declaration at Exhibit M to the Petition of consent and willingness to adopt Sarvesh by the prospective adoptive parents states that they are willing to be appointed and declared as the adoptive parents of the male minor Sarvesh. The Undertaking at Exhibit M-2 to the Petition states that they will allow personal visits by the Representative of the Authorized Foreign Adoption Agency (“AFAA”)

for follow up of the progress of the child as required under the Adoption Regulations.

25. As regards the change of name, the prospective adoptive parents desire that Sarvesh's name be changed to "David Josiah Herring".

26. The undertaking dated 9th October 2024 of the AFAA "Lifeline Children's Services", South Carolina, U.S.A., for furnishing post adoption follow-up reports of the child and make alternative arrangement in case of disruption of the adoptive family is on record at Exhibit-M-1 to the Petition.

27. The copy of Special Power of Attorney dated 22nd August 2024 duly executed by the prospective adoptive parents in favour of the Petitioner institution is on record at Exhibit N to the Petition.

28. Representation dated 27th January 2025 by Mr. O.Hareendran, Scrutiny Officer, Indian Council of Social Welfare ("ICSW"), which contains a chronology of all the approvals and reports necessary for adoption with a request to consider the same before passing the final order is perused and taken on record and marked "Y" for the purposes of identification.

29. The Petitioner institution's recognition as per the representation of ICSW to place children in adoption is valid for a period upto 5th May, 2025.

30. I have also interacted with the Prospective Adoptive Parents through video conferencing facility of this Court today and they are eager to adopt Sarvesh.

31. I have inquired from the prospective adoptive parents as to why despite having two biological children they are keen to have Sarvesh, who is a child with special needs, as their adoptive child and they have stated that they have always desired to grow their family through adoption and that it would be a beautiful thing to have diversity within the family unit and also provide a loving, supportive and stable home for the child as they believe that every child deserves a loving family. My interaction has revealed that both Brian and Stephanie appear to be a happy family having the necessary maturity to adopt Sarvesh especially considering that they already have two biological children - one son aged about 9 years and one daughter aged about 6 years. The psychological evaluation report which has assessed the suitability of the couple as adoptive parents suggests with affirmation that the Herrings

are of mental and moral suitability to adopt having provided a safe, loving and supportive home for their biological children and that they are a strong recommendation for adoption.

32. When this Court also inquired as to how they would be able to take care of Sarvesh who is special needs child, both his prospective adoptive parents have submitted that they have a strong support from extended families.

33. The home study report is also encouraging and speaks well of the suitability of the prospective adoptive parents to adopt Sarvesh as their child.

34. A perusal of the papers and also my interaction with the prospective adoptive parents indicate that the two biological children are also very excited about having a brother and look forward to having a positive relationship with him.

35. As far as the special needs of Sarvesh are concerned, the undertaking dated 15th September 2024 at page 26 clearly indicates that :

- (i) the prospective adoptive parents have fully understood the medical needs of Sarvesh, which are autism, Vitamin D deficiency, anemia and hypotonia.
- (ii) that they fully understand the diagnosis and the therapies that go along with them.
- (iii) that they have been in close contact with a pediatrician who is very comfortable treating all these special medical needs and will follow their recommendation.
- (iv) that they plan to arrange speech and occupational therapies once Sarvesh is home in their care.
- (v) that they are prepared to provide anything else Sarvesh may need to fully thrive and be a happy and healthy child.
- (vi) that since the child needs special attention, the prospective adoptive parents will, from time to time, take care of that aspect.
- (vii) they are confident that they can provide him access to the best healthcare according to his individual and unique needs.

36. From a review of their employment, income and financial documents, it appears that the Herrings have the wherewithal to take care of Sarvesh's upbringing, having residence of their own in York, South Carolina and both are having stable jobs.

37. I have also seen Sarvesh today as he has been brought before me by his caretaker from the Petitioner institution. Although his reports suggest that he is emotionally indifferent, he seems to be a quite child. Sarvesh will soon have a home and parents to take care of his welfare.

38. The true copy of the latest Development Assessment Report dated 22nd January 2025 and the Physiotherapist Report dated 2nd September 2024 tendered by Ms.Mehta states that Sarvesh needs one to one attention, reinforcement and motivation along with exposure to improve the present level of functioning and that he has to continue his speech therapy and that the child has achieved all the motor milestones, except for running and jumping and that he climbs up and goes down the stairs with support. As noted above, the said latest Development Assessment Report dated 22nd January 2025 and the Physiotherapist Report dated 2nd September 2024 have been shared, accepted and acknowledged by the Prospective Adoptive Parents.

39. Having considered the material on record as well as the representation of Mr. O. Hareendran, Scrutiny Officer, ICSW dated 27th January 2025, as well as the submissions by Ms.Mehta for the Petitioner and having interacted with the Prospective Adoptive Parents

online as well, I am of the view that it would be in Sarvesh's interest and welfare that he is adopted by the Prospective Adoptive Parents.

40. This Court is satisfied that the adoption is for Sarvesh's welfare and the prospective adoptive parents also have the wherewithal to take care of him. Since he is of 2 years 2 months, it is not possible to give consideration to his wishes but as *parens patriae*, I am of the view that the adoption will secure his special needs and upbringing. From the proceedings before me and the interaction with the proposed adoptive parents as well as the Mrs.Ujwala Ashtankar, social worker, and the learned Counsel, it does not appear to me that this is a case where any consideration has been given or agreed to be given in consideration for the adoption nor any material has been placed before me or brought to my notice to hold otherwise.

41. In view of the order dated 10th January 2023 of this Court 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, this Court has jurisdiction to consider and dispose of the present Petition. The relevant portion of said order of the Division Bench reads as follows :

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

“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.”

42. The Petition is allowed in terms of prayer Clauses (a) to (f) which read thus :

(a) This Hon'ble Court may be pleased to appoint the proposed adoptive parents as the parents of the male minor, Sarvesh now in the care of the Maharashtra State Women's Council Adoption Group, Asha Sadan Balgruh, Asha Sadan Marg, Umerkhadi, Mumbai - 400 009,

(b) That the proposed adoptive parents be allowed to change the name of the minor, from 'Sarvesh' to 'David Josiah Herring,

(c) That the proposed adoptive parents may be granted leave to remove the aforesaid child, Sarvesh @ David Josiah Herring from the jurisdiction of this Hon'ble Court and to take the minor out of India along with them, to their home i.e. wherever they may require him to,

(d) That the Petitioner be granted leave to apply to the concerned Municipal Authorities to issue a Birth Certificate of male minor 'David Josiah Herring' showing the names of the proposed adoptive parents as his parents,

(e) That the concerned Municipality / the Birth Certificate Issuing Authority may be directed to issue Birth Certificate for the said minor 'David Josiah Herring' within five working days from the date of application of the Petitioner, as per the provisions of sub-regulation 15 of the Adoption Regulations 18 and regulation 36,

(f) The concerned Regional Passport Office may be directed to issue Passport for the said 'David Josiah Herring' within ten days from the date of application, as per sub-regulation (4) of regulation 18 and regulation 38.

43. In addition to the above, Lifeline Children's Services, the AFAA to furnish an undertaking that it shall furnish report along with supporting documents/current medical reports, the status, growth and well being of the child Sarvesh to the Indian Embassy in Washington DC, every six months to be forwarded to the Petitioner as well as ICSW and to this Court till Sarvesh attains the age of majority in the U.S.A.

44. The Judge's order is accepted and signed separately.
45. All undertakings contained in the Petition are accepted as undertakings to this Court.
46. The Foreign Adoption Petition accordingly stands allowed and disposed as above.

(ABHAY AHUJA, J.)

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

ARTI
VILAS
KHATATE

Digitally signed
by ARTI VILAS
KHATATE
Date: 2025.02.07
22:17:20 +0530