

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 748/2025

Shilpa Anil Badgular and anr. .Vs. State of Maharashtra, through Police Station
 Officer, Jaripatka, Nagpur and Ors.

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. S. P Bhandarkar, Advocate for petitioners.
 Mr. A. B. Badar, A.P.P for respondent Nos. 1, 3, 5 and 6.
 Ms K. Pathak, Advocate for respondent No.2.
 Mr. C. J. Dhumane, Advocate for respondent no.4.
 Mr. J. S. Mokadam, Advocate for respondent No.7.

CORAM : ANIL L. PANSARE AND RAJ D. WAKODE, JJ.
DATE : DECEMBER 23, 2025.

On 22.12.2025, following order was passed:

“The petition was filed for issuance of writ of habeas corpus directing respondent no. 2 to produce the minor child ‘Swaransh’ and to handover custody of the child to the petitioners.

On 16-10-2025, a detail order was passed handing over interim custody of child to the petitioners with option to complete legal formalities, if so required for validating the adoption. The petition, however, was kept alive on submissions made by respondent no. 2’s counsel that guidelines of Central Adoption Resource Authority (CARA) will be applicable. Accordingly, respondent no. 4 – CARA was called upon to assist the Court on this point, particularly, in the light of the fact that respondent no. 7 - biological mother was willing to give the child in adoption to petitioner no. 1. We were of the view that the provisions of Hindu Adoptions and Maintenance Act, 1956 (for short ‘the Act of 1956’) will be applicable where biological parents are desirous of giving child to third party.

Mr. C. J. Dhumane, learned counsel for respondent no. 4, on instructions, submits that CARA guidelines will be not applicable to the adoption of a child covered by provisions of the Act of 1956. He, however, submits that in the present case, considering

the fact that respondent no. 7 herself has lodged First Information Report against Rekha Pujari and Munnibai Lilhare, the guidelines may be applicable.

We may note here that the assistance of respondent no. 4 was sought only on the point whether the guidelines will be applicable for giving the child in adoption by biological parents. Learned counsel for respondent no. 4 made a statement that it will be not. Accordingly, we dispose of the petition by making absolute the interim order dated 16-10-2025 giving interim custody of child 'Swaransh' to the petitioners, particularly petitioner no. 1. The legal formalities for validation of adoption, if required shall be completed by the petitioners.

At this stage, learned counsel for petitioners has invited our attention to the written submissions made by respondent no. 4. In paragraph nos. 27 to 32, following averments are made.

“27. That if, on grounds of sympathy or humanitarian considerations, courts continue to pass directions permitting direct, unregulated and extra-statutory adoptions by individual petitioners without routing the child through the JJ system, the entire object and architecture of the JJ Act stands defeated. Such directions inadvertently open the door for informal or private transfers of children without mandatory checks and balances, thereby creating vulnerabilities to trafficking, sale, purchase or exploitation of children.

28. That the statutory system under the JJ Act can function effectively only when all children in need of care and protection enter the system through proper reporting, production, inquiry and documentation. If children are allowed to bypass the statutory process and are handed over directly, then the authorities-including the District Child Protection Units, CWCs, and Specialised Adoption Agencies-cannot maintain an accurate pool of children legally free for adoption, thereby frustrating the entire adoption pipeline mandated by law.

29. *That such deviations also raise serious and concrete concerns regarding the documentation and verification of children involved in direct adoptions - specifically identification, age, health, social background, parental status and legal status - which are integral to safeguarding the child and to preventing trafficking, concealment or misrepresentation.*

30. *The statutory provision requires preparation of profile of the child with necessary information and uploading of a Child Study Report and a Medical Examination Report once a child is declared legally free for adoption, and mandates that these documents (with the child's photograph and certificate declaring the child legally free for adoption) be posted on the Designated Portal so that the child's profile and history remain traceable and auditable.*

31. *That the JJ Act requires an inquiry by the Child Welfare Committee and provides timelines and procedural safeguards (including social investigation, medical examination and restoration efforts) prior to any declaration that a child is legally free for adoption – the very inquiry which establishes legal status and enables lawful onward placement. Bypassing these statutory inquiries, therefore, undermines the legal foundation that protects the child's rights and the integrity of the adoption process.*

32. *That further, such direct adoptions adversely impact the rights of Prospective Adoptive Parents (PAPs) who have lawfully registered on the designated portal and who are waiting - sometimes for years - for a child to be referred to them through the legal process. Allowing others to obtain children directly from biological parents or intermediaries creates an unfair, unequal and unlawful parallel system, undermining the rights of PAPs who have complied with all statutory requirements, including HSR, documentation and scrutiny.”*

Thus, respondent no. 4 has failed to understand the fundamentals of the law applicable in the present case. She proceeds on the footings that the question of rights of biological parents to give child in adoption will be governed by JJ Act.

The JJ Act deals with orphaned, surrendered and abandoned children. Section 56 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides that adoption shall be resorted to for ensuring right to family for the orphan, abandoned and surrendered children, as per the provisions of the Act and regulations made thereunder.

Thus it is apparent that respondent no. 4 is lacking understanding of law. Apart from her failure to understand the law, the annoying factor is that she made certain averments about the functioning of the Courts, which has potential of undermining integrity and authority of the judicial system.

At this stage, learned counsel for respondent no. 4 submits that respondent no. 4 intends to withdraw averments made in paragraph no. 27 to 32. He seeks time to take instructions.

Kept back.

(JUDGE)

(JUDGE.)

Later on,

Learned counsel for respondent no. 4, on instructions, submits that respondent no. 4 has tendered apology and seeks permission to withdraw the averments made in paragraph no. 27 to 32. We may consider to accept the apology only if it is placed on record in writing.

List on 23-12-2025.

All concerned shall act upon authenticated/ uploaded copy of the order.”

2 In response, respondent No.4 has filed affidavit stating therein that averments in paragraph Nos.27 to 32 were not made to undermine integrity and authority of the Court. Accordingly, unconditional apology has been tendered.

3. We accept the apology, however, considering the averments made in these paragraphs, particularly paragraphs 27 and 32 which are also contemptuous, the Secretary, Ministry of Women and Child Development, may consider utilising services of respondent No.4 – Member – Secretary and Chief Executive Officer, Child Adoption and Rehabilitation Agency, New Delhi, in some different office/department.

With aforesaid observations, the apology is accepted.

4. The writ petition is disposed of.

(JUDGE)

(JUDGE)

Kahale