

IN THE COURT OF VII ADDL.CHIEF METROPOLITAN
MAGISTRATE AT BENGALURU CITY.

Present : Sri.UMESHA.H.K .B.A., LL.B.
VII A.C.M.M., Bengaluru.

Dated : On this 29TH day of April, 2023

C.C.No.2442/2023

PETITIONER'S	1	H.Siddaraju S/o late.Henjarappa, Aged about 57 years.
	2	Smt.K.Anitha W/o H.Siddaraju, Aged about 45 years, Both are residing at No.502, Divya MSR.Gateway, A block, Opp: M.S.Ramaiah Road, Gokulam, Bengaluru-54. (By Sri.N.Shiva Kumar, Advocate)

V/s

RESPONDENTS	Nil.
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ORDERS

This application/petition filed U/s 4 (iii) (a) (II) of
the Surrogacy Regulation Act 2021.

2. It is contended in the petition that the
petitioners are married couples and their marriage was
solemnized on 29.05.1998 they had a son by name
Dr.A.S.Nishanth., who was born on 12.08.1999.
Petitioner No.2 due to medical complications

underwent surgical procedure for total laproscopic hysterectomy (removal of uterus) on 14.11.2017 and therefore, she can no longer be a mother in the natural way. It is further stated in the petition that the only child of petitioner's died in a road accident in Mangalore on 13.12.2022 living behind the petitioners. Thereafter, petitioner's tried to adopt a child but it could not possible in view of stringent procedures. The petitioner's were advised to beget a child through gestational surrogacy. Since, the petitioner No.1 is aged about 57 years, the act restricts an intending couple from begetting a child through gestational surrogacy.

3. It is further stated in the petition that the petitioners have filed writ petition in 5861/2023 before the Hon'ble High Court, the Hon'ble High Court by its Order dated 21.04.2023 held that in the peculiar facts of the case, the petitioner's cannot be deprived of being parents through gestational surrogacy and the Hon'ble High Court directed the petitioner No.1 to undergo gene test to determine the quality of his sperm and to file appropriate affidavit before the competent authority declaring his physical ability and economic capacity to bring up the child that may be born

through gestational surrogacy. The petitioner's are directed to file affidavit before the competent authority for issue of essential certificate as provided under law.

4. It is further stated in the petition that the sister-in-law of petitioner No.1 Smt.Prathiba S.M, has offered to donate her ovum for fertilisation by the sperm of the petitioner No.1 and a family friend Smt.Padma has agreed to be the surrogate mother. It is further stated petitioners are not suffering from any ailments whatsoever and are absolutely healthy. They are financially well off having permanent residence of their own in Bengaluru apart from ancestral property in Kortagere.

5. It is further stated in the petition that an Order concerning the parentage and custody of the child to be born through surrogacy should be passed by a Court of the Magistrate of First Class or above on an application filed by petitioners. This is construed as the birth affidavit after the surrogate child is born. Hence, it is prayed to allow the application to pass an Order concerning the parentage and custody of the child to be born through surrogacy.

6. This petition is registered as Miscellaneous Petition. Petitioner Nos.1 and 2 in support of their petition contents filed their evidence affidavit/sworn statement and examined as CW-1 and 2 and got marked Ex.C-1 to 8 documents.

7. Heard, Ld.counsel for petitioner.

8. The following point would arise for my consideration :

1. Whether petitioner's have made out grounds to pass an Order concerning the parentage and custody of the child to be born through surrogacy ?
2. What Order ?

9. My answer to the above points are as :

POINT NO.1 : In the Affirmative.

POINT NO.2 : As per final order for the following :

REASONS

10. POINT No.1 : This petition is filed U/s 4 (iii) (a) (II) of the Surrogacy Regulation Act 2021. Petitioner's in support of their petition averments have filed their evidence affidavit and stated the averments

of petition in detail. In support of their oral evidence, they also placed Ex.C-1 to 8 documents.

11. As per the averments and documents placed by the petitioner's the only son by name Nishanth was died in a road accident on 13.12.2022, death certificate placed by petitioner's which is marked under Ex.C-4 discloses said Nishanth was died on 13.12.2022. After the death of their son the petitioner's who are husband and wife tried to adopt a child. But, due to stringent provisions and time constrain the said process was dropped. Later, the petitioner's were advised by the medical consultancy to have a child by way of surrogacy. Further, as per the averments one Prathiba who is none-other than sister-in-law petitioner No.1 came forward to donate her egg and a close family friend Smt.Padma has agreed to be a surrogate mother. But due to some age limit in the Act the petitioner's have filed the Writ Petition before the Hon'ble High Court in W.P.No.5861/2023 , and said petition was came to be allowed in part and petitioner's herein are directed to approach the Surrogacy board with appropriate application seeking re-ddressal of their grievance. As per the direction the petitioners's have submitted

application to the District Medical Board, K.C.General Hospital, Bengaluru, as per Ex.C-6.

12. Further, as per Chapter-III Sec.4 (iii) (a) (II) of the Act. An Order concerning the parentage and custody of the child has to be passed by a Court of the Magistrate First Class, on an application made by the intending couples. In view of the said provisions the petitioner's have filed this petition seeking the Order.

13. On perusal of petition averments and documents the petitioner's have lost their only son in a road accident. Now they intending to get a child under the process of surrogacy. So, this Court is satisfied that an Order concerning the parentage and custody of the child to be born through surrogacy can be passed. Accordingly, I answer Point No.1 in the Affirmative.

14. **POINT No.2** : In view of the discussion made above, this Court proceeds to pass the following :

ORDER

Petition filed U/s 4 (iii) (a) (II) of the Surrogacy Regulation Act 2021, is allowed.

Further, it is ordered that the petitioner's are the parentage/parents and custody of the child to be born through surrogacy and it shall be the birth affidavit after the surrogate child is born.

(Dictated to the Stenographer, directly and computerized by him, revised, corrected and then pronounced by me in the open Court on this 29th April, 2023)

(UMESHA H.K.)

VII Addl. C.M.M., Bengaluru.

A N N E X U R E S

List of witnesses examined for the Petitioners :

CW.1	Siddaraju,
CW.2	Anitha.

List of documents marked for the Petitioners :

Ex.C.1	True copy of Passport of Petitioner No.1
Ex.C.2	True copy of Identity Card of Petitioner No.1,

Ex.C.3	True copy of Passport of deceased Nishanth,
Ex.C.4	True copy of death certificate of Nishanth
Ex.C.5	Certified copy of Orders passed in W.P.No.5861/2023,
Ex.C.6	Copy of application submitted to medical board,
Ex.C.7	True copy of Passport of Petitioner No.2,
Ex.C.8	True copy of Medical records.

List of witnesses and documents examined for the Respondents	Nil.
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VII Addl.C.M.M.,Bengaluru.

