



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 12047 OF 2026 (GM-PASS)

BETWEEN:

1. SMT LAXMI AMBEKAR
D/O. LATE. ARVIND PADSALGI
AGED 43 YEARS
2. KUM. AASHVI PARITOSH AMBEKAR
D/O. PARITOSH PRAMOD AMBEKAR
AGED 3 YEARS
(SINCE MINOR
REP. BY HER MOTHER, PETITIONER NO.1)

BOTH ARE NOW R/AT NO.C-1
OWNERS COURT, NEW MICO ROAD
KASAVANAHALLI, BANGALORE SOUTH
BANGALORE-560 035.

...PETITIONERS

(BY SRI. PRAKASH .M.H, ADVOCATE)

AND:

1. THE UNION OF INDIA
MINISTRY OF HOME AFFAIRS
(FOREIGN DIV), MAJOR DHYAN CHAND
NATIONAL STADIUM, NEAR PRAGATHI MAIDAN
NEW DELHI-110001
REP BY HOME SECRETARY
2. SRI. PARITOSH PRAMOD AMBEKAR
S/O. PRAMOD SADASHIV AMBEKAR
AGED 48 YEARS





R/AT NO.1955, HULL AVE
REDWOOD CITY, CALIFORNIA STATE-94061
UNITED STATES OF AMERICA

...RESPONDENTS

(BY SRI. H. SHANTHI BHUSHAN, DSGI FOR R1;
V/O DATED 16.04.2026, NOTICE TO R2 IS D/W)

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE R-1 TO ISSUE OVERSEAS CITIZENS CARD OF INDIA (OCI) TO P-2 UNTIL SHE GETS THE PASSPORT FROM THE US CONSULATE IN INDIA NOTWITHSTANDING THE INVALIDATION OF HER EXISTING PASSPORT AND ETC.

THIS PETITION, COMING ON FOR DICTATING ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The captioned writ petition is filed seeking a direction to respondent No.1 to issue an Overseas Citizen of India (OCI) Card to petitioner No.2 and further to grant appropriate relief in the nature of temporary sole legal custody to petitioner No.1 so as to enable her to secure a U.S. passport for petitioner No.2 from the U.S. Consulate.

2. Petitioner No.1 and respondent No.2 were husband and wife, and petitioner No.2 is their minor



daughter. Petitioner No.1 is an Indian citizen holding a valid Green Card of the United States, whereas respondent No.2 and petitioner No.2 are citizens of the United States.

3. It is the specific case of petitioner No.1 that post the birth of petitioner No.2, she was subjected to cruelty at the hands of respondent No.2, which compelled her to take shelter with her brother in the United States. In this backdrop, she approached the competent Superior Court in California, which, upon adjudication on merits, passed a custody order coupled with a restraining order on 18.07.2024.

4. It is not in dispute that petitioner No.2, being a child born in the United States, was issued a U.S. passport valid up to 28.04.2030. Subsequently, the marital relationship between petitioner No.1 and respondent No.2 was dissolved by a decree of divorce dated 23.05.2025. The terms of the divorce, as evidenced in Annexure-E, clearly stipulate that:



" 5. CHILD CUSTODY

A. The parties agree to adopt the Stipulation filed on 2/13/2025 as their final custody/visitation agreement, as a final order pursuant to Montenegro v. Diaz. The terms are as follows:

B. Wife shall have sole physical custody of the minor child until she is 6.5 years old.

C. The parties shall share legal custody 50/50.

D. Except as may be specifically provided to the contrary in this Agreement, Husband shall not have any direct or indirect communication or contact with Minor child until she reaches 6.5 years of age. The Wife shall not restrict the child from communicating or meeting with Respondent or members of his family."

(Emphasis Supplied)

5. The records further reveal that petitioner No.1 is presently residing in India to take care of her ailing mother and had secured travel authorization for petitioner No.2 for a period of 180 days, which is set to expire on 22.04.2026 (Annexure-F).



6. It is averred that during the second week of November 2025, the passports of both petitioners were inadvertently damaged. While petitioner No.1 was able to secure reissuance of her passport being an Indian citizen, the passport of petitioner No.2 required the consent of respondent No.2.

7. Though respondent No.2 initially furnished a form of consent (Annexure-G), the same was found to be defective. Consequently, the U.S. Consulate, by its endorsement (Annexure-H), insisted upon submission of a duly notarized Form DS-3053 (Statement of Consent).

8. Despite repeated requests, respondent No.2 has failed to cooperate and has not furnished the requisite notarized consent. The communication issued by the U.S. Consulate (Annexure-J2) categorically indicates that in the absence of: "A notarized consent form; or A court order granting sole legal custody", the passport application of petitioner No.2 cannot be processed.



9. In light of the aforesaid facts, the point that arises for consideration is:

"Whether this Court, in exercise of its extraordinary jurisdiction, can invoke the *doctrine of parens patriae* to safeguard the welfare of the minor child and grant limited relief treating petitioner No.1 as a guardian for the purpose of securing travel documentation?"

10. This Court deems it apposite to extract reply by US Consulate, which reads as under:

"Dear Ms. Ambekar,

Thank you for your detailed message and for providing a copy of the Marital Settlement Agreement (MSA).

We have reviewed the MSA, including Section 5, line C, which states that the parties share legal custody 50/50.

While we acknowledge that you have been granted sole physical custody until your daughter is 6.5 years old, U.S. passport regulations require either:



- *A completed and notarized Form DS-3053 (Statement of Consent) from the non-applying parent, or*
- *Documentation showing that you have sole legal custody, not just sole physical custody.*

At this time, the MA does not indicate that you have sole legal custody. Therefore, we are unable to proceed with the passport issuance without one of the following:

- 1. A notarized DS-3053 consent form from the other parent, or*
- 2. A court order or legal document specifically granting you sole legal custody of your daughter.*

We understand the urgency of your situation and are committed to assisting you. If you are able to provide either of the documents listed above, please submit them at your earliest convenience so we may continue processing your daughter's passport application.

If you have any questions or require further clarification, please let us know."

(Emphasis Supplied)

This Court is not oblivious to the settled principle that in matters concerning custody and welfare of a minor, the paramount consideration is the welfare and best interest



of the child, and not the *inter se* rights of the parents. The Hon'ble Apex Court in ***Nil Ratan Kundu v. Abhijit Kundu***¹, has authoritatively held that Constitutional Courts, while exercising jurisdiction in such matters, act as *parens patriae* and are duty-bound to secure the welfare of the minor.

11. The Hon'ble Apex Court has adverted to Habeas Corpus, Vol. I, page 581, Bailey. The relevant extract is as under:

"The reputation of the father may be as stainless as crystal; he may not be afflicted with the slightest mental, moral or physical disqualifications from superintending the general welfare of the infant; the mother may have been separated from him without the shadow of a pretence of justification; and yet the interests of the child may imperatively demand the denial of the father's right and its continuance with the mother. The tender age and precarious state of its health make the vigilance of the mother indispensable to its proper care; for, not doubting that paternal anxiety would seek for and obtain the best substitute which could be procured yet every instinct of humanity unerringly proclaims that no substitute can

¹ (2008) 9 SCC 413



supply the place of her whose watchfulness over the sleeping cradle, or waking moments of her offspring, is prompted by deeper and holier feeling than the most liberal allowance of nurses' wages could possibly stimulate."

12. The Hon'ble Apex Court, advertng to the above passage from Bailey, has unequivocally underscored that even where the father is otherwise unimpeachable in character and capacity, his claim must yield if the welfare of the minor so demands, particularly having regard to the tender age of the child and the indispensable role of the mother's care.

13. Tested on the touchstone of the aforesaid principle, the conduct of respondent No.2–father in the present case falls markedly short of what is expected of a parent acting in the best interests of the child. Far from facilitating the welfare of the minor, the material on record discloses that he has returned the consent form unsigned and thereafter remained unresponsive to repeated



communications, fully conscious of the fact that such non-cooperation would impede the issuance of a valid passport and jeopardize the lawful stay and movement of the minor child. This deliberate inaction, in effect, places the child in a position of legal vulnerability, exposing her to the risk of overstaying and its attendant consequences. Such conduct is not merely passive indifference but operates to the detriment of the minor's immediate welfare and security. Such conduct, in the considered opinion of this Court, is not a mere omission but an act which directly impinges upon the welfare and legal security of the minor child, who is exposed to the risk of overstaying and consequent legal complications

14. In contrast, petitioner No.1-mother, who has been entrusted with sole physical custody during the formative years of the child, is the one ensuring continuous care, protection and compliance with legal requirements. Therefore, in the factual matrix of the present case, the father's assertion of joint legal custody



cannot be countenanced to defeat the pressing welfare needs of the minor, and his conduct, viewed in the light of the above principles, justifies the Court in leaning in favour of the mother to safeguard the child's best interests.

15. In the present case, the material on record clearly indicates that petitioner No.1 has been granted sole physical custody of the minor child until she attains the age of 6.5 years. The minor child, who is aged about 3.5 years, is presently under the exclusive care, custody and protection of petitioner No.1.

16. Though the divorce decree provides for joint legal custody, the conduct of respondent No.2 assumes significance. The records unmistakably demonstrate that Respondent No.2 initially issued a defective consent. Thereafter, he has failed to furnish a valid notarized consent form, despite repeated requests, he has remained unresponsive.



17. This Court is of the considered view that the deliberate non-cooperation on the part of respondent No.2, particularly in the backdrop of a situation where the minor child's stay in India is time-bound and regulated by visa conditions, amounts to an act detrimental to the welfare and interest of the minor child.

18. Applying the humane and welfare-centric test as articulated in the above extract, this Court is of the view that the insistence on paternal consent, in the peculiar facts of the present case, must yield to the overriding consideration of the minor's immediate interests, thereby justifying an arrangement that enables the petitioner No.1 – mother to act decisively in securing the child's lawful travel and protection.

19. The minor child is a citizen of the United States and is presently in India on a temporary visa along with her mother. The inability to secure a valid passport would not only render her stay illegal upon expiry of the



authorized period but may also expose her to coercive consequences, including deportation.

20. In such a fact situation, this Court cannot remain a silent spectator. The *doctrine of parens patriae* obligates this Court to step in and ensure that the minor child is not rendered stateless in effect or placed in a precarious legal situation owing to the non-cooperation of one parent.

21. This Court is therefore of the considered opinion that for the limited purpose of securing travel documentation and facilitating the exit of the minor child from India, petitioner No.1, who is already vested with sole physical custody, deserves to be treated as a guardian of the minor child.

22. It is made clear that this arrangement is purely temporary and situational, and does not amount to a modification of the custody arrangement decreed by the competent Court in California.



23. Having regard to the peculiar facts and emergent circumstances, this Court holds that the ends of justice would be met by granting limited relief enabling petitioner No.1 to act in the best interest of the minor child. Accordingly the point for consideration is answered in the ***affirmative.***

24. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) The writ petition is ***allowed in part.***

(ii) Petitioner No.1, who is in sole physical custody of petitioner No.2, is treated as the guardian of the minor child for the limited purpose of securing travel documentation, in view of the non-cooperation of respondent No.2.

(iii) Petitioner No.1 is permitted to approach the U.S. Consulate and seek issuance of an



emergency travel document for petitioner No.2 to enable her to exit India and return to the United States.

(iv) Petitioner No.1 is further permitted to initiate and pursue an application for issuance of a fresh passport on behalf of petitioner No.2 before the competent authorities in the United States.

(v) Concerned authorities shall consider the request of petitioner No.1 in the light of the observations made in this order, keeping in view the welfare of the minor child.

(vi) It is clarified that this order is passed in exercise of "*parens patriae jurisdiction*" and shall not be construed as an adjudication altering the terms of custody contained in the divorce decree dated 23.05.2025.



(vii) In view of reliefs granted, prayer (i) does not survive for consideration presently.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

ALB
List No.: 2 Sl No.: 50