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IN THE HIGH COURT OF MANIPUR
AT IMPHAL

AB No. 27 of 2022

Md. Tamijur Rahaman, aged about 36 years, S/O Khalilur
Rahaman, resident of Urup Awang Leikai, P.O. & P.S.
Lilong, Imphal East District, Manipur, PIN : 795009.

.....Petitioner

-Versus-

1. The Officer-in-Charge, Lilong Police Station, Manipur
having its office at Lilong, Manipur, P.O. & P.S. Lilong,
Thoubal District, Manipur, PIN : 795009.
2. The State of Manipur through Home Secretary,
Government of Manipur having its office at old
Secretariat Building, Babupara, P.O. & P.S. Imphal,
Imphal West District, Manipur, PIN : 795001.

.... Respondents.

AB No. 28 of 2022

Md. Rizwan, aged about 30 years, S/O Ph. Siraj, resident
of Lilong Leihaokhong, P.O. & P.S. Lilong, Thoubal
District, Manipur, PIN : 795009.

.....Petitioner

-Versus-

1. The Officer-in-Charge, Lilong Police Station, Manipur having its office at Lilong, Manipur, P.O. & P.S. Lilong, Thoubal District, Manipur, PIN : 795009.
2. The State of Manipur through Home Secretary, Government of Manipur having its office at old Secretariat Building, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur, PIN : 795001.

.... **Respondents.**

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioners :: Mr. M. Devananda, Advocate

For the Respondents :: Mr. Lenin Hijam, AG
Mr. H. Samarjit, PP

Date of Hearing and
Reserving Judgment & Order :: 18.07.2022

Date of Judgment & Order :: **05.08.2022**

JUDGMENT AND ORDER
(CAV)

These petitions have been filed by the petitioners under Section 438 Cr.P.C. seeking to enlarge them on bail in the event of their arrest in connection with FIR No.29(05)2022 on the file of Lilong Police Station under Sections 21(c)/29 of the ND&PS Act.

2. Heard Mr. M. Devananda, learned counsel for the petitioners and Mr. Lenin Hijam, the learned Advocate General for the respondents.

3. The case of the prosecution is that on 20.4.2022 at about 2.00 a.m., one Md. Ajmir Hussain of Lilong Leijaokhong MathakLeikai came to Md. Aslam Khan and informed that Md. Ershad Khan was arrested by a team of Narcotic Cell, Imphal East led by ASI Md. Tamijur Rahaman (petitioner in A.B.No.27 of 2022). Thereafter, Aslam Khan and the father of Ershad Khan went for Canchipur and on reaching Palahanbi, Canchipur area, they met ASI Md. Tamijur Rahaman of Narcotic Cell and had a talk with him. At that time, ASI Md. Tamijur Rahaman demanded Rs. 5 lakh for releasing accused Ershad Khan and the seized drugs (brown sugar). But, after a long discussion, the amount demanded was settled at Rs.1.5 lakh for releasing of Ershad Khan and the drugs. Thereafter, the father of Ershad Khan called Md. Ajmir Hussain for delivering the said amount of Rs.1.5 lakh to him for releasing his son.

4. Further case of the prosecution is that Md. Ajmir Hussain went to the house of Ajmir Huissain @ Ethem asking him to deliver the amount of Rs.1 lakh to Yahaya Khan at Palahanbi. Accordingly, Md. Ajmir Huissain @ Ethem went to deliver the

amount of Rs.1 lakh to Md. Yahaya Khan at Lilong Bazaar. The said amount was delivered as part of Rs.1.5 lakh demanded by the ASI Md. Tamijur Rahaman for releasing Ershad Khan and the drugs. The father of Ershad Khan borrowed a sum of Rs.50,000/- from one of his friends Md. Hibjur Rahaman, who lent him Rs.50,000/-. Thereafter, he along with the father of Ershad Khan went to Palahanbi and met ASI Md. Tamijur Rahaman and given the amount to him.

5. According to the prosecution, after receiving Rs.1.5 lakh, ASI Md. Tamijur Rahaman of Narcotic Cell, Imphal East released Ershad Khan, however, the seized drugs were not delivered back to them. ASI Tamijur Rahaman told them that if they want to get the drugs back, they have to deliver a sum of Rs.50,000/- more and for that they have been directed to met ASI Md. Rizwan (petitioner in A.B.No.28 of 2022). As per the direction of ASI Tamijur Rahaman, they paid Rs.50,000/- to ASI Md. Rizwan (petitioner in A.B.No.28 of 2022).

6. The case of the petitioners is that they are discharging their duty with the instruction of their higher officers and even arrested many drug users and drug sellers in the State of Manipur by registering many FIRs and in fact many accused are in judicial custody now. According to the petitioners, appreciating

the duty performed by the petitioners, they were given incentive award by the State Government. Further case of the petitioners is that they are innocent and have been falsely implicated in this case with the collusion of the original accused involved. The investigating authority has falsely levelled allegation against the petitioners that they are acting as transporter of the drug suppliers. Thus, the petitioners are apprehending arrest in the hands of the respondent police and hence, they have filed the anticipatory bail applications.

7. Mr. Devananda, the learned counsel for the petitioners submitted that a team of Narcotic Cell, Imphal East led by the petitioner in A.B.No.27 of 2022 never arrested Md. Ershad Khan on 22.4.2022 as alleged and that the petitioner Md. Tamijur Rahaman never met the father of Ershad Khan on 22.4.2022 at 1.30 a.m. for releasing Md. Ershad Khan and had also never asked money for his releasing.

8. The learned counsel further submitted that on 24.4.2022, the petitioner Md. Rizwan (petitioner in A.B.No.28 of 2022) left Imphal to Delhi for his father's heart operation and came back only on 12.5.2022. Thus, he has been falsely implicated in this case. He would submit that it is also clear that the investigating officer has made a concocted story to make the petitioners as

accused in conspiracy with the two arrested accused, who are now in judicial custody in order to take a revenge against the petitioners for discharging their duties in combating the drug users and drug sellers in the State of Manipur.

9. The learned counsel next submitted that the allegation made by the investigating officer against the petitioners is not correct meaning thereby that the concerned police station has not arrested Md. Islauddin and Md. Ershad Khan till now, which would show that Md. Islauddin and Md. Ershad Khan are innocent and there was no such incident as alleged on 22.4.2022 in the area of Lilong Turel Ahanbi Khongnang Makhong Bridge for exchanging money with the petitioners.

10. The learned counsel for the petitioners then submitted that earlier, the petitioners have filed anticipatory bail applications before the learned Sessions Judge, Thoubal and the same were rejected holding that there is very highly possible that the petitioners would hamper/tamper the investigation of the case. According to the learned counsel, such a conclusion arrived at by the learned Sessions Judge is erroneous and without basis.

11. The learned counsel for the petitioners urged that the investigating officer of Lilong Police Station has nothing to do with

the present petitioners, as the registration of FIR No.29(05)2022 is for the arrest of two accused, namely Md. Ajmir Hussain @ Ethem and Md. Ajmir Hussain with drugs of brown sugar from the custody of Md. Ajmir Hussain @ Ethem and not with the arrest of Md. Ershad Khan. In fact, the petitioners or by a team of Narcotic Cell never arrested Md. Ershad Khan While so, the Lilong Police are trying to arrest the petitioners in the FIR No.29(05)2022 pending on its file. Thus, a prayer is made to grant anticipatory bail to the petitioners.

12. Per contra, Mr. Lenin Hijam, the learned Advocate General assisted by Mr. H. Samarjit, learned Public Prosecutor appearing for the respondents submitted that FIR No.29(05)2022 of Lilong Police Station is under active investigation and the role of the petitioners abusing their official position is well established not only from the statements of the arrested accused, but also supported by the independent witnesses. He would submit that there is a concrete evidence of involvement of the petitioners in receiving money for release of Ershad Khan. In fact, their official position has been misused by the petitioners for their personal gain and to destroy the society through drugs.

13. The learned Advocate General further submitted that detailed interrogation of the petitioners is highly required, as the

offences charged against the accused are serious and grave offences and that the petitioners are not ordinary citizens but police officers entrusted with powers to curb the drug menace which is presently destroying the youth and the future of the State of Manipur. Thus, a prayer is made to dismiss the anticipatory bail applications.

14. This Court considered the rival submissions and also perused the materials available on record.

15. The sum and substance of the allegation levelled against the petitioners is that they acted as transporters of the drug suppliers by receiving amount from them. Furthermore, they received amount for the release of one Ershad Khan, who is also stated to be involved in the transportation/selling of brown sugar.

16. As could be seen from the records, FIR No.29(05)2022 of Lilong Police Station was registered under Sections 21(c)/29 of the ND&PS Act based on the written report submitted by the complainant SI M.Badal Singh of CDO-IW on 16.5.2022. Pursuant to the said report, teams of CDO, Imphal West led by the complainant under the supervision of M.Amit Singh MPS, ASP (Ops) rushed to the area in question after giving prior information to Thoubal District Police Control Room and

conducted cordon and search operation. In the course of search, when they searched the house of Md. Ajmir Hussain @ Ethem, they found one suspected black plastic polythene bag inside his bed room and on further questioning, he stated that it is brown sugar weighing approximately 1 kg. and also stated that the same was given to him by his neighbour Md. Ajmir Hussain. Immediately, the respondent police arrested the aforesaid two persons.

17. During investigation, the accused Md. Ajmir Hussain implicated Md. Islauddin, who in turn implicated Md. Ershad Khan. On 22.5.2022, when the investigating officer was with Md. Zahaya Khan, Ershad Khan contacted over phone to his father Md. Zahaya Khan and informed that he was arrested by Narcotic Cell personnel led by ASI Tamijur Rahaman (petitioner in A.B.No.27 of 2022). When the father of Ershad Khan approached the petitioner in A.B.No.27 of 2022 for release of Ershad Khan, he demanded Rs.5 lakh and after negotiation, a sum of Rs.1.5 lakh was agreed and accordingly the said sum was given to ASI Tamijur Rahaman. Though after receipt of the amount, ASI Tamijur Rahaman released Ershad Khan, the seized drug was not returned back and the petitioner ASI Tamijur Rahaman directed to contact the petitioner in A.B.No.28 of 2022 (ASI Md. Rizwan) for release of

drugs and in the course of discussion, Md. Rizwan demanded Rs.50,000/- for release of drugs.

18. The grievance of the petitioners is that they are innocent and they have not committed any offence as alleged by the prosecution. The petitioners have also stated that they have discharged their duties with the instruction of their superior officers. It is also stated that the petitioners arrested many drug users and drug sellers, for which they have been given many incentive awards. In support, the learned counsel for the petitioners has produced a letter dated 10.12.2021 addressed by the Inspector General of Police (Admn) to the Chief Secretary, Government of Manipur recommending cash reward along with commendation certificates of Hon'ble Chief Minister of Manipur for busting brown sugar making factory with large quantity of suspected brown sugar and its raw materials. On a perusal of the said letter along with its annexure, this Court finds that only the rank wise break-up for the proposed distribution has been stated and no specific name of the officers has been mentioned. In view of the above, the petitioners cannot contend that they have been recommended by the Police Department for cash reward appreciating their duties and the letter dated 10.12.2021 is not helpful to the case of the petitioners.

19. The fact remains that on 16.5.2022 based on the reliable information from the complainant's own source about the presence of smugglers dealing with arms and ammunition at Lilong Leihaokhong area, teams of CDO Imphal West led by the complainant SI M.Badal Singh of CDO-IW under the supervision of the then ASP (Ops) rushed to Lilong Leihaokhong area and conducted a search. While searching the house of accused Md. Ajmir Hussain @ Ethem, the team recovered black plastic polythene bag containing brown sugar weighing approximately 1 kg. On enquiry, the accused Md. Ajmir Hussain admitted that it was given to him by Md. Ajmir Hussain, son of Md. Siraj Ahmed. Immediately, the team rushed to the house of Md. Ajmir Hussain and arrested him. On questioning, he admitted the statement as disclosed by Md. Ajmir Hussain @ Ethem and he further stated that the brown sugar has been handed over to him by one Md. Islauddin to sell to willing customers. The arrested two accused namely Md. Ajmir Hussain @ Ethem and Md. Ajmir Hussain were interrogated and recorded their statements one after another by the investigating officer.

20. That apart, accused Md. Ajmir Hussain @ Ethem disclosed that accused Md. Ajmir Hussain came to his residence and informed that his son-in-law Md. Ershad Khan was arrested

by a team of Narcotic Cell led by ASI Md. Tamijur Rahaman from Rurel Ahanbi Khongnang Makhong Bridge and Md. Ajmir Hussain requested Md. Ajmir Hussain @ Ethem to deliver a sum of Rs.1 lakh at Lilong Bazar to handover it to his younger brother Md. Aslam Khan who was with Md. Zahaya Khan (father of Ershad Khan) for release of Ershad Khan who was arrested along with brown sugar by a team led by ASI Md. Tamijur Rahaman (petitioner in A.B.No.27 of 2022).

21. The statements of Md. Ajmir Hussain @ Ethem and Md. Ajmir Hussain are prima facie disclose that the petitioner ASI Md. Tamijur Rahaman demanded money for releasing Ershad Khan and the brown sugar. Md. Ajmir Hussain and the father of Ershad Khan have given Rs.1.5 lakh to ASI Md. Tamijur Rahaman and upon receipt of the said sum, Ershad Khan was released, however, the drugs were not released. But the petitioner in A.B.No.27 of 2022 directed to contact ASI Rizwan (petitioner in A.B.No.28 of 2022) to get the drugs. When the father of Ershad Khan contacted the petitioner in A.B.No.28 of 2022, he demanded Rs.50,000/- for giving back the drugs.

22. The aforesaid version of the prosecution prima facie reveals that the petitioner in A.B.No.27 of 2022 who was posted at Narcotic Cell, Imphal East and the petitioner in A.B.No.28 of 2022

who was posted at Moreh Police Station are involved in the commission of transporting and delivering of the narcotic drug and psychotropic substances which has been seized in connection with FIR No.29(05)2022. Both the petitioners have demanded money for release of the apprehended accused and the drugs. Since the involvement of the petitioners have been prima facie established by the prosecution, they are required to be arrested in the present case to find out the truth and also to arrest all the accused persons involved in the possession and smuggling of the drugs.

23. It is also the case of the prosecution that the petitioners are evading arrest despite diligent search including the house search by the investigating authority. It is also the case of the prosecution that despite message sent to the concerned officers-in-charge directing the petitioners who were serving as ASI in Manipur Police Department to appear before the investigating officer, they were not responded to the message nor produced by the concerned officers-in-charge till date. The attempt to effect arrest of the petitioners, who were under suspension has also failed and the petitioners have been absconding to evade police arrest.

24. The materials produced by the prosecution prima facie disclose that the petitioners herein were actively involved in this heinous crime of drug transportation/smuggling and otherwise supporting the arrested accused involved in the drug smuggling by receiving amount for their release. A detailed interrogation statement of the petitioners could not be recorded completely in connection with the present case and in fact the petitioners are concealing the facts of the crime to escape from the liability of the offence by saying false story.

25. At this juncture, it is pertinent to note that in the case of ***Nathu Singh V. State of Uttar Pradesh, reported in 2021 CRI. L.J. 2593 : AIR Online 2021 SC 260***, the Hon'ble Supreme Court held that the discretionary power of the Court under Section 438 Cr.P.C. cannot be exercised in an untrammelled manner. In paragraph 25, the Hon'ble Supreme Court observed as under:

“25. However, such discretionary power cannot be exercised in an untrammelled manner. The Court must take into account the statutory scheme under section 438 Cr.P.C. particularly, the proviso to section 438(1) Cr.P.C., and balance the concerns of the investigating agency, complainant and the society at large with the concerns/interest of the applicant. Therefore,

such an order must necessarily be narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating authority. Such an order must be a reasoned one”

26. In the instant case, even though the petitioners could not be spotted, the arrest of the two accused and their statements and also collection of materials, particularly, against the petitioners, a prima facie case has been made out against them. It would not be appropriate to discuss all those materials in great detail at this stage.

27. Earlier, the petitioners approached the learned Sessions Judge, Thoubal by filing Cril. Misc. (AB) Case Nos.47 and 48 of 2022 for anticipatory bail. Initially, by the order dated 21.05.2022, the learned Sessions Judge granted interim pre-arrest bail, however, by the order dated 23.05.2022, the learned Sessions Judge dismissed both the petitions holding that the petitioners are police officers and therefore, it is highly possible that they would hamper/tamper the investigation of the case. The learned Sessions Judge, while rejecting the anticipatory bail applications has considered the case and has rightly rejected the same. This Court finds no error in the order of the learned

Sessions Judge. This Court is also the firm view that the learned Sessions Judge was right in holding that it is highly possible that the petitioners would hamper/tamper the investigation of the case influencing their official capacity.

28. The statement of the learned counsel for the petitioners that the petitioners are always ready to cooperate with the investigation as and when necessary and question of arresting them does not arise at this juncture cannot be countenanced for the reason that in the facts and circumstances and the position they held, the petitioners will not co-operate with the investigation and there is every chance to hamper/tamper the investigation.

29. Though there is no direct proof to show that the petitioners have received Rs.1.5 lakh for the release of Ershad Khan, the phone call summaries of the petitioners with the arrested accused produced by the learned Advocate General during the course of arguments prima facie prove that the petitioners had contacted the accused person, particularly Ershad Khan, his father Md. Zahaya Khan and Md. Islauddin. Thus, the prosecution has prima facie established the involvement of the petitioners with the crime.

30. The learned counsel for the petitioners argued that the gravity of the charge alone cannot be a decisive ground to deny anticipatory bail when there is no good reason to apprehend the arrest of the petitioners. As stated supra, the involvement of the petitioners in releasing Ershad Khan by receiving the amount has been established by the prosecution. Therefore, the argument of the learned counsel for the petitioners that there is no good reason to apprehend the arrest of the petitioners in the crime does not merit acceptance.

31. In so far as the grant or refusal of the anticipatory bail is concerned, the Hon'ble Supreme Court in the case of ***Siddharam Satlingappa Mhetre vs State of Maharashtra & Ors. (2011) 1 SCC 694*** has laid down the parameters asunder:

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has

previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences.
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- (vi) Impact of grant of anticipatory bail particularly incases of large magnitude affecting a very large number of people.
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over

implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

32. Further in the case of ***Jai Prakash Singh vs. State of Bihar,(2012) 4 SCC 379***, the Hon'ble Supreme Court

elucidated the principles for consideration of anticipatory bail which are as under:

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See D.K.Ganesh Babu v. P.T. Manokaran & Ors., (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S.Husain, (2008) 1 SCC 213, and Union of India v. Padam Narain Aggarwal, (2008) 13 SCC 305).”

33. Having considered the given facts and circumstances of the case and keeping in mind the parameters laid down by the Hon'ble Supreme Court in the judgments cited above and also the gravity of the offence, this Court is of the view that the petitioners cannot be granted anticipatory bail in this case.

34. Section 8(c) of the NDPS Act lays down that no person shall produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or transit any

narcotic drug or psychotropic substance, except for medical or scientific purpose and in the manner and to the extent provided by the provisions of the Act. Section 22 of the Act is the penal provision which provides that whoever, in contravention of any provision of the Act or any rule or order made or condition of license granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance, shall be punishable with imprisonment.

35. At the end, it would also be appropriate to mention that in a recent decision in the case of ***Gurudev Singh v. State of Punjab, reported in 2021 SCC OnLine SC 285***, the Hon'ble Supreme Court held that ***“persons dealing with narcotic drugs are hazard to the society and therefore, while awarding the sentence/punishment in case of NDPS Act, the interest of the society as a whole is required to be taken in consideration”***. In the said decision, the Hon'ble Supreme Court also observed that ***“in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims***

who are vulnerable; it cause deleterious effects and deadly impact on the society; they are hazard to the society”.

36. In the instant case, as stated supra, being police officer who was holding the post of ASI in the Narcotic Cell, the petitioner in A.B.No.27 of 2022 and the petitioner in A.B.No.28 of 2022 who was attached with Moreh Police Station as ASI themselves helped the accused persons for illegal possession and transportation of drugs and even for their release by receiving amount from them. The act of the petitioners correlates to the old adage which says “***as if the fence itself grazed the crop***”. Such type of police officers cannot be extended any relief and they will have to face the criminal case and its consequence.

37. An anticipatory bail can be granted only in exceptional circumstances where the Court is prima facie of the view that the applicant has falsely been implicated in the crime and would not misuse his liberty. Here, it is a case where taking the advantage of the positions held as Assistant Sub Inspectors of Police in the Narcotic Cell and in the Police Station respectively, the petitioners have helped in possession and transportation/smuggling of the narcotic drugs by the accused persons. Evaluating the entire materials produced by the parties, this Court is of the view that this is not a case falling under the

exceptional circumstances. Therefore, the petitioners are not entitled to seek the relief prayed for by them and, accordingly, the anticipatory bail applications of the petitioners are liable to be dismissed.

38. In the result, the anticipatory bail applications are dismissed. The interim order granted by this Court is vacated. The petitioners are directed to surrender before the concerned investigating officer within a week from today.

39. At the end, it is to be mentioned that in the State of Manipur drugs smuggling is alarming. The Hon'ble Chief Minister of this State has announced in the recent meeting a complete eradication of drugs in the State of Manipur and asked who were all involved in the drug trafficking to come out voluntarily and surrender for the safety of their families and themselves. Despite the said announcement, day in and day out, news appears in the newspapers qua possession of narcotics and psychotropic substances and its seizure from the accused and their arrest by the special team. In the history, the State of Manipur is called as jewelled land/Kangleipak or Meeteileipak. In such a beautiful State, the illegal acts of transporting, smuggling and selling the narcotic drugs is being done by the accused persons which has a drastic affect on the society at large and such illegal

possession/transportation/smuggling, apart from selling, of narcotic drugs is to be eradicated in the State.

40. In the light of the above and in order to ensure that the State is freed from selling/transporting/smuggling ganja, brown sugar, heroin and other narcotic substances by the persons, apart from the existing special team, it would be appropriate to direct the Government of Manipur to constitute a Special Committee headed by a Senior IPS officer for monitoring the drug cases at the State Level, with formation of Sub-Committees at District Level in the State headed by the Superintendent of Police to weed out drug-peddling. The State Level Committee is therefore directed to be constituted by the Government of Manipur within a period of two weeks from the date of receipt of a copy of this order and thereafter within a further period of two weeks District Level Committees shall be constituted.

41. For reporting compliance and for further orders, let these petitions be listed on 19.09.2022.

JUDGE

FR/NFR

Sushil