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3. Notice served upon the official respondent through State counsel. Counsel for the State on instructions from SI Kashmir Singh, Police Station Salem Tabri, Ludhiana, seriously opposed the present petition on the ground that petitioner has massive criminal history including the cases under Sections 302 & 307 IPC and later on serious offence including NDPS Act. She further submits that petitioner is not entitled to bail on the ground of massive criminal history.

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. However, considering that quantity allegedly attributed to the petitioner is just three grams of heroin, this Court is not asking for any written response/reply from the State. It is for the reason that on the face of it, quantity involved is small and either the petitioner was acting like a small time supplier or was himself a drug dependent. Although it would be desirable for the petitioner to mention about the complete criminal history but considering the fact that quantity involved is not only small and even half of the small, this Court is not dismissing the present petition on the ground of non-mentioning of criminal history.

6. Given this, the rigors of S. 37 of the NDPS Act do not apply in the present case.

7. Section 2 (vii-a) of the NDPS Act defines commercial quantity as greater than the quantity specified in the schedule. Section 2 (xxiii-a) defines a small quantity as a quantity less than the quantity specified in the table of the NDPS Act. The remaining quantity falls in an undefined category, generally called an intermediate quantity. All sections in the NDPS Act specify an offence and mention the minimum and maximum sentence, depending upon the quantity of the substance. The commercial quantity mandates a minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of the NDPS Act. When the quantity is less than commercial, the restrictions of Section 37 of the NDPS Act will not attract, and the factors for bail become similar to the offence regular statutes.

8. In *Sami Ullaha v Superintendent Narcotic Control Bureau*, (2008) 16 SCC 471, the Hon'ble Supreme Court holds that even in intermediate quantity, the rigors of the provisions of Section 37 may not be justified. In this case the quantity is small.



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9. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it was not impossible.

10. Given the above, the penal provisions invoked coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for anticipatory bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

11. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaka Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

12. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

13. The bail order is subject to the petitioner's complying with the following terms. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

14. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

15. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from



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the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

16. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

23.08.2024
anju rani

Whether speaking/reasoned:	Yes
Whether reportable:	No.