



from the conscious possession of the petitioner. He further prays for bail by imposing any stringent conditions and on instructions submits that petitioner shall not indulge herself in the offence involving the commercial or intermediate quantity or the offence which falls under Section 19/24/27A of NDPS Act. He further submits that if the petitioner involves herself in the said offences, he has no objection if the State files application for cancellation of his bail. He further contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and her family.

5. The State's counsel opposes bail and refers to the reply.

6. It would be appropriate to refer to following portion of the reply, which reads as follows:-

"xxx xxx xxx xxx

That the present FIR was registered on the basis of secret information that on 17.10.2024 Ranu who carries out the business of selling Heroin, was going to supply Heroin to her customers and was going to give some quantity of Heroin to Gejo Kaur (petitioner) that day. Accordingly, co-accused Ranu Kaur was arrested and found to be in possession of 268 gm Heroin.

That the petitioner was arrested on 26.10.2024 who then got recorded her disclosure statement under Section 23(2) BSA, 2023 wherein she stated that she was going to purchase 100 gm of Heroin on 17.10.2024 and Rano had to supply this Heroin to her at Sangrur. That around 15 days prior also the petitioner had purchased 250 gm Heroin from Rano Kaur (co-accused). That she had sold some to the customers and the remaining Heroin had been hidden by the petitioner under the bricks lying under the branches of neem tree situated on unpaved road near the bridge of canal situated at the Sunam-Lehra main road of village Ninowal.

That on the basis of said disclosure statement 40 gm Heroin was recovered from the aforementioned spot which was taken into police possession through recovery memo dated 26.10.2024.

5. *That Bittu Singh, a relative of co-accused Rano Kaur was arrayed as accused on the basis of her disclosure statement dated 20.10.2024.*

A. role of the petitioner.

That the petitioner Gejo Kaur is a drug peddler, who was named in the present FIR on the basis of secret information.

B. The evidence against the petitioner

That the present FIR was registered against the petitioner Gejo Kaur on the basis of secret information. The petitioner got recorded her disclosure statement dated 26.10.2024 and on the basis of the same got recovered 40 gm Heroin.

C. The name and total weight of the drug

That 40 gram Heroin has been recovered on 26.10.2024 on the indication of the petitioner.

D. The copy of the FSL Report, if received.

That copy of FSL report dated 29.11.2024 is being annexed herewith as Annexure R-1."

REASONING:



7. Evidence against the petitioner are that she was likely to purchase 100 grams of heroin, previously also purchased 250 grams heroin, and got recovered 40 grams heroin, however it is not a prosecution case that she had paid any advance for said purchase order or had actually received the contraband. In such a situation, the contract between petitioner and Rano Kaur was incomplete and there was only intention to purchase and to that effected there is only disclosure statement of main accused, which is legally inadmissible. Regarding the disclosure statement of petitioner of earlier purchasing 250 grams of heroin, it is also hit by Section 23(1) (2) of BSA 2023. Thus the only evidence against the petitioner is recovery of 40 grams of heroin based on disclosure statement on 26.10.2024. Given above, the quantity which this court would consider for the purpose of adjudicating bail is 40 grams of heroin which falls under intermediate quantity.

8. Given the quantity the rigors of S. 37 of the NDPS Act do not apply in the present case.

9. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity 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.

10. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act¹.

11. The pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, per paragraph 11 of the bail petition, the petitioner has been in custody since 26.10.2024. Per the custody certificate dated 01.04.2025, the petitioner's total custody in this FIR is 05 months and 05 days. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage.

12. 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 bail. This order shall come into force from the time it is uploaded on the official webpage of this Court.

¹Supreme Court of India, in Rabi Prakash v. The State of Odisha, SLP (Crl) 4169-2023, Para 4, decided on 13 July 2023



CONDITIONS:

13. 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 concerned Court and due to unavailability before any nearest Ilqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

14. 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)	

15. This order is subject to the petitioner’s complying with the following terms.

16. 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.

17. Given the background of allegations against the petitioner, it becomes paramount to protect the members of society, detection squad and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearms. [This restriction is being imposed based on the preponderance of the evidence of probability and not of evidence of certainty, i.e., beyond a reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days of release from prison and inform the Investigator of the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and reclaim them in case of acquittal in this case, provided otherwise permissible under the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

18. **This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall have the liberty to cancel this bail.**

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



20. 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 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.

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

29.04.2025
renubala

(ANOOP CHITKARA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No