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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.120 OF 2024**

SUKHCHAND MAHESH PATHAK

..APPELLANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Adv. Sandeep Mishra for the appellant.

Ms. S. D. Shinde, APP for the State.

**CORAM : M. S. KARNIK, J.**

**DATE : FEBRUARY 7, 2024**

**P.C. :**

1. Heard learned counsel for the appellant.
2. Briefly stated the appellant was enlarged on bail by the trial Court. The complainant filed an application at Exhibit-15 for cancellation of bail on the ground that no notice of bail application Exhibit-3 on which the bail was granted to the appellant was given to him and he was not heard before grant of bail. The complainant alleged breach of the mandatory provisions of Section 15(3)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter "Atrocities Act", for short). The trial Court observed that no such notice was given to

the complainant and there being no hearing to the complainant is clear infraction of Section 15(3)(5) of the Atrocities Act. The bail which was granted to the appellant was cancelled. This order is impugned by way of the present appeal.

3. Learned counsel for the appellant submitted that in view of the settled position of law in **Abdul Basit Alias Raju and others vs. Mohd. Abdul Kadir Chaudhary and another**<sup>1</sup> the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation. It is submitted that the order granting bail can only be set aside on grounds of being illegal or contrary to law by the Court superior to the Court which granted the bail and not by the same Court.

4. In this view of the matter prima facie it appears that the trial Judge was in error in setting aside the order granting bail on an application made below Exhibit-15 before the same Court.

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1 (2014) 10 SCC 754

5. Issue notice to the respondent No.2-complainant, returnable on 06.03.2024. Learned APP waives service of notice on behalf of Respondent No.1-State. The Investigating Officer to intimate the respondent No.2 the next date of hearing.
6. Till next date the impugned order shall not to be given effect.
7. Stand over to **06.03.2024.**

**(M. S. KARNIK, J.)**