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'Blood sample would not yield DNA genetic profile'

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KUALA LUMPUR, Wed. - A blood sample from Datuk Seri Anwar Ibrahim which was sent for analysis in connection with a semen-stained mattress had additives mixed into it and would not yield any results, the High Court heard today.

Criminal Investigation Department deputy director SAC I Musa Hassan said the sample which was sent for a DNA test on Dec 9, would not yield a DNA genetic profile.

Answering questions by defence counsel Christopher Fernando, Musa said he was informed about the additives by Kuala Lumpur Hospital forensic experts who also told him that a DNA test on the sample would not yield any results.

Musa testified yesterday that he sent this sample for a DNA test and had been told of the results. He had said the sample was the only one given by Anwar for a HIV test but was used for the DNA test.

Before hearing began today, Anwar had time to say hello to several old boys of Malay College Kuala Kangsar, his former alma mater, who came to court. Besides their school tie, the men also pinned on a white ribbon.

Musa was back in the stand for cross-examination by defence counsel Christopher Fernando.

It began by Musa tendering two original letters and one fax copy of a letter from Anwar's leading counsel Raja Aziz Addruse, objecting to Musa's requests for a blood sample from Anwar and a body examination.

The letters were marked as IDD70A, B and C. While this was being done, senior deputy public prosecutor Datuk Abdul Gani Patail spoke with Fernando.

Fernando: I thank Datuk Gani for having extended the DNA report to us on the paternity of Afifah. I am going to produce it now. (marked as IDD71)

(The report was the result of DNA tests on blood samples of Anwar's former private secretary Mohamed Azmin Ali, his wife Shamsidar Taharin and their daughter Afifah.)

(It was to determine the paternity of Afifah, as Azmin's sister Ummi Hafilda Ali had expressed suspicion that Afifah was Anwar's child.)

Fernando read out portions of the report. The blood samples tested were marked A for child, B for mother and C for the alleged father. The report said the ABO results showed that C cannot be excluded as the biological father of A.

It also said the fourth test done showed a 99.9693 per cent probability of paternity based on the Malaysian database. It also said the combined probability on 19 genetic loci was 99.9999 per cent.

It said there was therefore no doubt that C is the biological father of A. Questioned by Fernando, Musa said C was the sample taken from Azmin.

Judge: Is it necessary to go into all this? I am thinking of the ultimate interest of the child, unless you think this is so important.

Fernando: Yes, I think so. It is a serious allegation and we have to clear it or the child will carry a stigma for the rest of her life. (To Musa) Yesterday, you told the court that additives were added to the blood sample taken from Anwar. Who told you this?

Musa: Dr Abdul Halim and Dr Zahari (forensic experts from Kuala Lumpur Hospital).

Musa said they did not tell him the type of additive and whether it would destroy the protein in the sample.

Fernando: What did they tell you?

Musa: Only that if the blood is used for a DNA test, it will not yield any results.

Fernando: So, it would not permit a profile to be obtained in a DNA test?

Musa: Yes.

Asked about his meeting with Anwar on Aug 30, 1997, Musa said by that time he already knew of a Press statement by the Prime Minister (published in the New Straits Times on Aug 25).

Fernando read out one paragraph: "I don't think it will damage (his reputation) ... unless somebody is very stupid to believe such ridiculous accusations against him.' He said the matter was now closed."

Fernando: When the PM made this announcement that the matter was closed, would you consider it a directive to you?

Musa: No.

Fernando: Are you saying you can go against the directive of the PM who is also the Home Minister?

Musa: I didn't accept ...

Fernando: Answer my question!

Abdul Gani: He did not say he's going against the PM's directive.

Judge: You are saying that the question has no bearing to the (earlier) answer given?

Abdul Gani: Yes.

Fernando: That's a matter for submission. I am asking a specific question.

Judge: I don't think questions should be asked to confuse the witness. Ask him if the PM's announcement was a directive to him.

Fernando: When the PM says the matter is closed, is this not clearly and unequivocally a directive to everyone, specifically the police?

Musa: I didn't see it as a directive.

Another paragraph was read out: "Dr Mahathir, who is also Home Minister, said the police had investigated the matter and concluded that there was no case. `I received a report on this and I am quite satisfied with the report.'"

Answering questions, Musa said (at that time), he did not know who gave the report to the PM. He said he found out about the report when he investigated the book 50 Dalil Mengapa Anwar Ibrahim tidak boleh jadi PM (50 Reasons why Anwar Ibrahim cannot become PM) in August this year.

Fernando: You are lying.

Senior DPP Azahar Mohamad: I want to object. He cannot simply put to the witness that he is lying without laying the foundation.

Fernando: I am coming to that. Hold on, be patient. (to Musa) I put it to you that you are lying.

Musa: I am telling the truth in court.

Fernando: Yesterday, you said you knew of PM's statement on Aug 25, 1997.

Musa: Yes, I knew, through the newspapers.

Fernando: Now you are saying ...

Abdul Gani: You (Fernando) are lying.

Fernando: (pointing a finger at Abdul Gani) Don't make derogatory remarks.

Judge: Don't point your finger. Maybe you haven't finished your question?

Fernando: I think my learned friend should withdraw his remark or I am going to say something very derogatory about him.

Judge: Finish your question first. (Laughter in court)

Fernando: Yesterday, you said you read the newspaper statement, that you

are aware of the statement.

Musa: I read the newspaper, not the report (from the police).

Fernando: Does the statement clearly refer to a report sent to the PM?

Musa: Yes.

Judge: (to Fernando who was firing his questions) Do you want me to record or not? I can be a bystander.

Musa repeated his answer that he read the newspaper, not the report.

Abdul Gani: My Lord, I apologise to the court and withdraw my remark. My reason for saying it was that I can't stand to see witnesses being accused of lying without it being proven beyond reasonable doubt.

Judge: (to Fernando) Obviously your (earlier) question was not articulate enough. You did not break it down like you did now.

Fernando: I accept my learned friend's apology graciously. (To Musa) The statement of the PM clearly mentions the report?

Musa: Yes.

Fernando: So as early as Aug 25, 1997, you already knew of the existence of a report to the PM?

Musa: I did not know.

Fernando: Doesn't the (Press) statement talk of a report?

Musa: Yes.

Fernando: So you know?

Musa: I do, through the newspapers.

Fernando: Today, you said you did not know of any report.

Musa: I told the court that only now, this year, when I investigated the Dalil book, I knew that a report was sent to the PM by SP1 (former Special Branch director Datuk Mohd Said Awang).

Fernando: Who told you?

Musa: I recorded his (Mohd Said) statement.

Fernando: When I asked you yesterday if you recorded a statement from him, you said no.

Musa: I didn't say that.

Azahar: (reads back yesterday's evidence) He (Musa) said he didn't record a statement in 1997.

Fernando: I asked a general question.

Azahar: May I assist the court? The line of questioning yesterday was in relation to 1997.

Judge: (To Fernando) You must be careful about what he said earlier.

Fernando: I didn't ask him, he volunteered 1997.

Judge: It's part of the evidence. You have to be fair to the witness.

Fernando: Do you now know of a police report to the PM?

Musa: Yes, now I know.

Judge: He told that about five times and I have recorded it several times.

Fernando: I have no further questions. My learned friend (indicates Gurbachan Singh) will continue.

Questioned by Gurbachan, Musa said no statements were recorded from the PM, Special Functions Minister Tun Daim Zainuddin, Attorney-General Tan Sri Mohtar Abdullah, former Malacca Chief Minister Tan Sri Rahim Tamby Chik, Inspector-General of Police Tan Sri Rahim Noor or police director of management Datuk Jamil Johari.

Musa said his officer ACP Yahya Udin recorded a statement from Domestic Trade and Consumer Affairs Minister Datuk Seri Megat Junid Megat Ayob in August.

The same officer recorded a statement from former Criminal Investigation Department director Datuk Ismail Che Rus in October. Musa said he himself recorded a statement from PM's political secretary Datuk Aziz Shamsuddin in September.

A cautioned statement was recorded from Anwar.

Asked by Gurbachan, Musa said neither he nor his officers supplied copies of statements to witnesses. The judge pointed out an English case which allows for this to be done and this was supported by senior DPP Mohd Yusof Zainal Abiden. Gurbachan disagreed but said he would come to this later.

Gurbachan: Do you maintain an official diary of your movements?

Musa: Yes.

Gurbachan: Where were you on Oct 26, 1998, between 7pm and 2am?

Musa: I cannot remember.

Gurbachan asked him if he could produce his diary. The judge asked if the diary is privileged as once the witness refreshes his memory from it, it can be accessed by everyone.

Mohd Yusof contended that it was. Gurbachan said he merely wanted an answer to his question and left it to the witness how he answered it.

Gurbachan: I will defer the question. When was a statement taken from Ma'amin? (Ma'amin Latip, whom Azizan Abu Bakar alleged was harrasing him.

(Azizan, the former driver of Anwar's wife, claimed that Anwar had sodomised him. He alleged that Ma'amin harrassed him to sign a statutory declaration which, in effect, denies the sodomy.)

Musa: In November this year, if I am not mistaken.

Musa said one statement and two further statements were taken by his officer ASP Mazlan Mansor and himself. Musa said he met Ma'amin each time the statements were taken.

He said he went with Mazlan to see Ma'amin on Nov 19 at the Sungai Udang police station in Malacca and also said he met Ma'amin again on Nov 22.

Gurbachan: On Oct 26, you were with Ma'amin from 8pm to 2am?

Musa: Now, I remember. He came to my office.

Musa also said he did not know if Rahim King (Abdul Rahim Dahalan whom Azizan also alleged had harrassed him) was used by the PM for certain projects. Rahim King's statement and two further statements were taken on Oct 26.

Musa said he knew Ma'amin had lodged a report against him but no statement had been taken from him (Musa). He denied that police had asked Ma'amin to change his statement.

Gurbachan then applied to tender Anwar's cautioned statement (marked as D72).

Asked about the Umno general assembly this year, Musa said he was not at the meeting. He knew it was in June but did not know the exact date.

Asked about Azmin's police report this year against the Dalil book, Musa complaint about defamation against him (Azmin) and his family (as contained in the Dalil book).

Musa also agreed that the report mentioned that the book was circulated at the Umno assembly. He confirmed that based on this report, the author of the book Khalid Jafri had been charged.

He agreed that Azmin and Shamsidar had not lodged reports against Anwar. Musa also said he knew that Azmin was arrested by police this year and remanded.

Gurbachan: When was investigation into this case re-opened?

Musa: I began investigations on June 22.

Gurbachan: What was the first statement you recorded?

Musa: From Ummi and Azizan.

He said it was in June and taken by his officers.

Gurbachan referred to a Star report dated April 10 this year (marked as IDD73). A para was read out: "The police finished investigating the case regarding Azizan's statement and submitted a report to the AG for his perusal. The AG decided that the investigation had shown that allegations

contained in the statement against Anwar were false and were in fact defamatory."

Musa said this was a statement about the 1997 investigations.

Asked about the letter Talqin Terbuka untuk Anwar Ibrahim (Last Rites for Anwar Ibrahim), he said he did not take statements from the organisations mentioned in it. (The organisations purportedly wrote the letter).

Musa said he could not determine who wrote the Talqin letter.

Asked about documents seized from the Prime Minister's Department, he said he only took two away recently, the apology letters of Ummi and Azizan. He got them on Nov 6.

Gurbachan: Did you seize or receive any documents from Daim, Rahim (Tamby Chik) or Megat Junid?

Musa: I received the letters as stated by the lawyer.

Gurbachan: My question was did you seize or receive any documents?

Musa: No, I did not.

Gurbachan: You mentioned about receiving letters. Please clarify.

Musa: An appendix to a document was given to me by Mohd Said. Hold on, I apologise ... There was no document. I made a mistake, I was confused by the question.

Gurbachan: What did you get from the SB?

Musa: Ummi's and Azizan's letters of apology and Ummi's letter Perihal Salahlaku Timbalan Perdana Menteri (The Matter of the DPM's Misconduct).

He said he did not have any letters written by Daim or Megat Junid.

Asked about the arrest of Ummi and Azizan from Dr Ristina Majid's house on Aug 17, 1997, Musa said he was the most senior police officer there. He said Jamil was there but had nothing to do with the CID or SB.

Gurbachan: When were you promoted to SAC I?

Musa: Oct 1, 1998.

Gurbachan: Are you aware that Dr Ristina, on that day (Aug 17), rang up the IGP from her house?

Judge: You are jumping here and there. I don't know if Dr Ristina got him promoted. (laughter in court).

Gurbachan: We don't know about that yet.

He continued asking about the arrest. Musa agreed that from his observations that day, Jamil could be known to Dr Ristina's family.

Asked if he sent Azizan's sworn statement to document experts for analysis of the signature, he said he did not.

Musa said he had custody of the SB file on the investigation but there were no copies of any report to the PM.

Gurbachan: Did you direct your investigation towards whether there were elements or politicians involved in a conspiracy against Anwar?

Musa: Yes.

Gurbachan: (reads IGP's Press statement dated Sept 3, 1997) "Rahim said the former inspector was used by certain persons who were behind the poison pen letters." Did you ascertain who were these persons?

Musa: No.

Hearing adjourned for lunch.

When hearing resumed, Musa said a statement could be recorded under section 112 of the Criminal Procedure Code as a formality and he agreed with Gurbachan that such statement should contain the truth and comply with the law.

Musa agreed that his investigations this year showed that Ummi and Azizan were not involved in the Dalil book.

When shown a photograph of Anwar with Ummi and Shamsidar (ID48), Musa said the picture was not in the Dalil book. He said the picture could possibly be taken during an Umno assembly.

To another question, the witness said neither he nor his officers took any statement from Datuk S. Nallakaruppan in connection with this case. (Nalla, Anwar's tennis partner, is facing a charge under the Internal Security Act for having 125 bullets.)

No statement was also taken from Ummi's father.

Gurbachan: Apart from Mohd Rodwan, who else searched the Tivoli Villa apartment on July 10?

Musa: ASP Wan Zainuddin Wan Mahmood was also there.

Gurbachan: Any search list?

Musa: I think there is.

(A mattress with 13 suspected seminal stains was seized from the apartment and the mattress was tendered yesterday).

Musa said the search list was in his possession and could produce it. He said neither Anwar nor Nalla was present during the search.

To a question, Musa agreed the investigations continued even after the trial had commenced. Asked by counsel, Musa said a statement was recorded from lawyer Sukdhev Singh pursuant to Azizan's report.

On a report lodged by Ma'amin, Musa agreed that the report (IDD74) was against him (Musa). Asked if the contents were correct, Musa said some were while others were not.

For example, he said, Ma'amin's contention that he (Musa) called him between 8pm and 2am on Oct 26, was false.

Gurbachan: But you were with him then?

Musa: No.

Gurbachan: Where were you?

Musa: At home.

Musa said he had checked his diary on this. He said the other two dates mentioned in the report were correct.

To a question, Musa said it was not unusual for police to get a statement at 1am or 2am if the witness was available at that time.

Asked by counsel, Musa agreed that Anwar was not his superior and that illegal directives from his superior should not be obeyed. He said his superiors never gave unlawful orders.

Musa agreed that an investigating officer should be independent.

Gurbachan: In the course of your investigations, did you discover that ID14A, 14B and P14C (Ummi's and Azizan's allegations) were widely circulated?

Musa: No.

Gurbachan: I put it to you that you are not telling the truth.

Musa: No! I disagree.

Gurbachan: P15 (the Talqin letter) was widely circulated.

Musa: I cannot confirm that.

Counsel referred to a news report quoting the IGP saying that some people, including an ex-police officer, was involved in circulating the letter widely.

Musa said he could not confirm the IGP's statement since he was not there when it was made.

Gurbachan: Are you disputing it?

Musa: No. I cannot dispute or confirm it.

Musa then read the statement. In the meantime, the judge said it was wrong for counsel to ask the witness to confirm someone else's statement.

After Musa read the statement, Gurbachan asked if he agreed that the letters were widely circulated. Azahar objected and the judge said the witness had answered the question.

Gurbachan said at this stage, the defence could not call the IGP or the reporter who wrote the report.

Judge: The question is unfair ... never mind ask him again.

Counsel repeated the question and in reply, Musa said he could not say if the quotes attributed to the IGP were true. As the investigating officer in the case, he did not brief the IGP on his 1997 investigations.

When counsel asked Musa if he denied the statement, the judge stopped him.

To a question, Musa said he briefed Ismail about his investigations but he did not know if Ismail told the IGP about it.

Asked by counsel if Anwar was the complainant in the case while Azizan and Ummi were the suspects, Azizan said the accused was not. He said the report was lodged by Anwar's then ADC, ASP Zull Aznam Harun, but after reading it, Musa agreed that it was lodged on Anwar's behalf.

To a question, Musa said he did not know if Anwar was keen to have those who defamed him prosecuted, but was discouraged by the PM.

To another question, he said he did not know if there were earlier letters different from ID14A, 14B and P14C which were sent to the PM.

The court took a short break and when hearing resumed, Gurbachan showed Musa two letters Anwar wrote to the PM and asked if he had seen them. He said "no". The letters, dated Aug 25 and 28, were marked IDD76 and IDD77.

To a question, Musa said he did not discover any handwritten letter from Daim to Anwar in the course of his investigations.

Asked by counsel, Musa said he knew Anwar was sacked on Sept 2, but did not know that Anwar's offices were sealed that afternoon and by whom.

Musa said none of Anwar's files, letters or personal diary were given to him.

The witness said he knew the accused was arrested on Sept 20 and had lodged a report against the police for allegedly assaulting him while under detention.

To a question, Musa said he knew that Anwar had lodged a report in June this year at the Jalan Travers police station against the Dalil book.

Gurbachan told the court that he would produce the report through Musa once it was available.

The judge told counsel to sort it out.

To a question, Musa disagreed that his investigations were shoddy and incomplete.

Gurbachan said he had no more questions until the report was produced.

When Fernando wanted to ask Musa some questions, the judge said he could not do that.

Judge: I thought you have finished with him ... you cannot go round and round.

Fernando: Not round and round, My Lord.

Judge: Turn by turn!

The judge asked Azahar if he was ready to re-examine the witness and when the DPP said he was, the court took a short break.

When proceedings resumed, Gurbachan said he had several questions to ask Musa since he was just given search lists dated Sept 4 and 5. The judge allowed him to proceed.

The list was produced through Musa and marked ID78 and 79. Musa agreed that among the items seized was a 1998 diary and the witness said he would try to produce them.

Cross-examination of Musa was continued by Fernando who showed an undated letter written by Anwar's adopted brother Sukma Darmawan Sasmitaat Madja to the accused.

The judge asked Fernando what this letter had to do with Musa and Rodwan and counsel said it contained allegations against the two (Musa and Rodwan).

Fernando then showed the letter to Musa and when counsel asked for it to be marked, the judge told him to question the witness first since he could

not just mark the letter.

To a question by Fernando, Musa said he did not know that the letter was written by Sukma when he was in detention.

(Sukma was jailed six months for allowing Anwar to sodomise him.)

When Fernando said he would like to read a certain paragraph in the letter, Azahar objected to the document being marked, contending that since the letter appeared to be downloaded from the Internet "the defence cannot just pluck any document" and tender it through Musa.

Fernando said he had a handwritten copy of the letter. The typewritten copy (shown to Musa) was for reading convenience.

Counsel said he wanted to produce it at this stage to enable the witness to rebut it, lest the defence would be blamed later.

Judge allowed the letter to be marked IDD80, but it was objected by Abdul Gani. The objection was overruled.

Fernando: (To Musa) I put it to you that he (Sukma) was forced into admitting he had homosexual relationship with the accused, Azizan, Mior, Ismail and others. Did you force him to admit and sign the document referred to in paragraph two (of the letter)?

Musa: No! The allegations are false!

Referring to paragraph two, Fernando asked Musa if it was true that he (Musa) and Rodwan were asking themselves the reasons for Sukma's arrest.

Musa denied the allegation, saying that it was false. When counsel took some time to browse through the letter, the judge said: "I think you did not get proper instructions from your client. You cannot give document by piecemeal."

Judge: When did you get it?

Fernando: This afternoon.

Counsel then went on to read another paragraph of the letter in which Sukma described how he was taken for a forensic test and anal test.

Judge: Give him the letter and let him comment.

Fernando: I am at paragraph three now.

Judge: (To Musa) Read the whole letter.

Musa read the letter in a whiff and when asked by counsel, he said he had not seen it before and the allegations in paragraph three were false.

Fernando: Even the forensic test?

Musa: There was a forensic test (conducted), but not the way it was described in the letter.

To a question, Musa said he did not know if Sukma was taken back to the interrogation room after the test.

More questions were asked pertaining to several other paragraphs in the letter which, among other things alleged that police had threatened to detain Sukma under the Internal Security Act and plant bullets in his house and car.

Some of the questions were disallowed by the judge, while those which were allowed, were denied by Musa who said that all the allegations were false.

After more questions were asked, the judge ruled that only specific questions relating to Musa should be asked and this led to a discourse between Fernando and the judge, who finally ruled there should be no further questions on the letter.

One of the pertinent allegations denied by Musa was that he (Musa) had told Sukma that there was a lawyer called Ganesan engaged for him (Sukma), but since "he had stolen" Ismail, he (Sukma) was not allowed access to the counsel.

Fernando said: "In view of the court's ruling, I would like to ask one The judge told counsel to proceed.

Fernando: (To Musa) Did you or your men, as alleged by Sukma, force him

(Sukma) to falsely implicate the accused in the offence of sodomy?

Musa: No! My officers and I did not.

Counsel said he had no further questions and Abdul Gani said he might have to produce rebuttal evidence.

Abdul Gani: In view of this, I would like to tell the court that I may be bringing rebuttal evidence, including a videotape.

Judge: On what? You cannot tell?

Abdul Gani: They can see for themselves.

Hearing continues.