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Court-Anwar (Judge)

ANWAR WANTS JUDGE TO DISQUALIFY HIMSELF FROM HEARING SODOMY CASE

KUALA LUMPUR, Sept 27 (Bernama) -- The sodomy trial of Datuk Seri Anwar Ibrahim today resumes at the High Court here with the counsel for the former deputy prime minister asking the judge to disqualify himself because he was a business associate of the Prime Minister's son almost 10 years ago.

Anwar's counsel, Karpal Singh said Justice Datuk Arifin Jaka should not continue to hear the case due to his association with Mirzan Mahathir when both of them were directors and major shareholders of Dataprep Holdings Bhd.

"There is a real danger and reasonable apprehensions or suspicions that My Lordship would be biased, although we (the defence) are not alleging that you are biased," he said.

Karpal Singh said that Justice Arifin should have made a disclosure about "his link with the PM's son" after he was appointed as the trial judge of the case or before the trial commenced.

"If disclosure is not made at the commencement of the trial, then we can take up the point even at this stage," he said on the 53rd day of the trial which commenced after Anwar was pronounced fit to attend the court proceedings by the Universiti Kebangsaan Malaysia Hospital (HUKM) where he was warded to undergo tests since Sept 10 following his allegation of arsenic poisoning.

Anwar, 52, and his adopted brother, Sukma Darmawan Sasmitaat Madja, 38, are jointly tried with sodomising Azizan Abu Bakar, 39, at Sukma's apartment in Tivoli Villa, Bangsar, here, at 7.45pm, between January and March 1993.

Sukma, who is a businessman, also faces another charge of abetting Anwar to sodomise Azizan, the former driver of Anwar's wife, at the same place and time.

Karpal Singh also furnished the court with the list of shareholders in Dataprep taken from a prospectus.

According to the list, Justice Arifin held 87,941 units of Dataprep shares with Mirzan holding 381,597 units of the company's shares, which made him the major shareholder.

Karpal Singh also told the court that it was significant that Mirzan's father, Datuk Seri Dr Mahathir Mohamad, as the prime minister, advised the King on the appointment of judges.

"The person who is responsible for putting into effect the prosecution against Datuk Seri Anwar Ibrahim on the charges framed is in fact, under the circumstances prevailing here is the prime minister," he said.

When Karpal Singh said it was common knowledge that Dr Mahathir had given Anwar an ultimatum either to resign or face charges, Justice Arifin interjected and said there was no such evidence before the court.

However, the counsel persisted that it had been raised in Anwar's previous corruption trial (where he was found guilty and jailed six years), therefore, Justice Arifin should take judicial notice on the matter because it could raise a suspicion that he might be biased.

Justice Arifin said, "in what way am I biased?" to which Karpal Singh replied, "I'm not saying you are biased, but there is a likelihood that you might be biased in the mind of reasonable fair-minded persons."

"You are making this assumption that because I was at one time in private practice and had a position in this company, which was linked to

Mirzan Mahathir, who is the son of the prime minister, that there is now a doubt on my fairness in this trial and suspicion of bias. Is that it? You have said enough," said Justice Arifin.

However, Karpal Singh replied that the fact remained that there was a business association between Justice Arifin and the prime minister's son, a business association.

"The fact that this trial has gone on to this stage should be of no consequence for Your Lordship to disqualify yourself," he said.

Karpal Singh also urged the judge to carefully consider the issue as he was personally involved.

"There ought not to be a suspicion in the mind of the public that the trial has been contaminated in any way," he said.

Sukma's counsel, Gobind Singh Deo, who supported Karpal Singh's submission on the matter, said that they were alarmed with what had been disclosed by him because it was a joint trial and the court's decision would also effect his client.

Attorney-General Tan Sri Mohtar Abdullah, who led the prosecution team, said that he was "shocked and regretted the conduct of my learned friend, Karpal Singh for bringing up this application (to disqualify the judge)."

"This, My Lord, was not done in respect of the true spirit as the officer of the court but, in the sense of malice on behalf of the defence," he said.

Mohtar said in his capacity as the Attorney-General, he knew that when a judge, especially from a private sector is appointed, he is required to resign from all his business posts and other appointments which might effect his ability to perform his judicial duties.

Mohtar said Mirzan, Dataprep and Dr Mahathir were not a party in the sodomy case and "Arifin's connection" with the prime minister's son when he was an advocate and solicitor, was irrelevant.

At this juncture, Karpal Singh informed the court that the defence would call the prime minister as their witness.

Mohtar said the issue before the court was whether such connection would impair the judge's independence, fairness and impartiality and whether there was a real likelihood of bias on the part of the judge in respect of the case he was hearing.

He also submitted that the court had to consider the test of real dangerous and reasonable apprehensions or suspicions in the mind of a reasonable, fair-minded person, and not of interested parties such as "politicians, reformasi-minded persons, BN-minded persons or PAS-minded persons."

When Mohtar almost completed his submissions, another of Anwar's counsel, Christopher Fernando, informed the court that the former deputy prime minister "was not feeling very well."

When asked by Justice Arifin, Anwar informed the court that "my head is aching and I am feeling feverish".

Before Justice Arifin postponed the hearing to tomorrow, Karpal Singh informed the court that he would make an application to recall Azizan.

-- BERNAMA

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