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Bid to disqualify judge from hearing Anwar case

Ruslaini Abbas; Satwant Singh

KUALA LUMPUR, Mon. - Datuk Seri Anwar Ibrahim's lawyer today applied to disqualify the judge from further hearing the case for fear of bias since he had failed to reveal his interest in a company connected with the Prime Minister's son.

Anwar's lawyer Karpal Singh said since the court had earlier considered public impression when disallowing a nurse's presence in court, it showed that public opinion was significant in the case. (See accompanying story.)

Citing the English case of Pinochet Ugarte, Karpal said judge Datuk Arifin Jaka's failure to declare his link with Dataprep Holdings Bhd might give a negative impression.

Karpal said since justice should not only be done but must be seen to be done, "let nothing be led in anyone's thinking that Datuk Seri Anwar is not receiving a fair trial."

A trial could only be fair if the judge was free, independent and unbiased in performing his duties, Karpal said, while assuring that the defence was not saying Arifin was biased.

What he meant was that a judge had to be seen to be just and fair, he added.

Karpal said he had a document showing that in 1990 Arifin was a director and shareholder of Dataprep, in which a company belonging to Mirzan Mahathir had a controlling interest.

Arifin said he had also received the document.

Karpal said the Prime Minister was the head of the executive, whose advice was required in the the appointment of judges.

"That being the position, the person responsible for putting the charges against Datuk Seri Anwar is in fact the Prime Minister," Karpal said and asked the judge why did he not disclose his association with Mirzan.

Karpal said the Prime Minister had sacked Anwar after giving an ultimatum that either he resign "or bear the consequences".

Arifin said that was not evidence, but Karpal contended that it was in the previous trial and asked the court to take judicial notice of the fact.

(In the previous trial, Anwar was sentenced to six years' jail on each of four counts of corrupt practice.)

"At one time Your Lordship was close to the Prime Minister's son and Your Lordship was appointed as a judge by the Prime Minister. Thus, there is a likelihood in the people's mind that Your Lordship is likely to be biased," Karpal said.

Counsel said it was appropriate for the judge to disqualify himself to ensure that such negative impression did not prevail, in line with the decision in Pinochet's case.

(Pinochet is Chile's former head of state who had gone to England for medical treatment. While there, his extradition was sought by the Spanish Government for alleged crimes against humanity.)

(Two provisional warrants for his arrest were issued by a magistrate's court, but they were subsequently quashed by the Divisional Court.)

(However, the quashing of the second warrant was stayed pending an appeal to the House of Lords relating to the question of the proper interpretation and scope of the immunity of a former head of state from arrest and extradition proceedings in the United Kingdom relating to crimes committed while he was head of state.)

(Amnesty International was allowed to intervene in the proceedings and subsequently, the appeal was allowed by a 3:2 majority on Nov 25, last year, and the second warrant was restored.

(It was later found that one of the Law Lords in the majority was a director and chairperson of Amnesty International Charity Ltd, which was incorporated to carry out Amnesty International's charitable purposes and petitioned the House to set aside the Nov 25, 1998 order.

(In the final analysis, the Law Lord was disqualified from hearing the appeal and Pinochet's matter was ordered for re-hearing before another committee.)

Anwar is on trial with his adopted brother businessman Sukma Darmawan Sasmitaat Madja for allegedly sodomising former driver Azizan Abu Bakar in 1993.

Sukma is also facing a second charge of abetting Anwar in sodomising Azizan who is the former driver of Anwar's wife Datin Seri Dr Wan Azizah Wan Ismail. Sukma's counsel Gobind Singh Deo adopted Karpal's submission "since this is a joint trial".

In his reply, Attorney-General Tan Sri Mohtar Abdullah expressed "shock" at Karpal's move to make the application at this stage.

(The trial is in the midst of hearing submissions at the close of the prosecution's case.)

"This is another attempt to disqualify Your Lordship from hearing the case and it is not done in the spirit of an officer of the court, but with some malice."

Mohtar said when a judge was appointed from the private sector, he was required to resign from his position and relinquish all business and other interests which might hamper his work in the judiciary.

The A-G said he was aware that Arifin had done that and this was objected to by Karpal who contended it was not in evidence.

Mohtar said Arifin had met "all shapes of people" prior to his appointment as a judge and the fact that he had dealings with Mirzan was irrelevant to the trial.

He said Mirzan was not a party and neither was Dataprep or the Prime Minister involved in the case.

Karpal interjected, saying that the defence would call the Prime Minister in case a defence was ordered.

"To be called as a witness would not make him (the PM) a party to the proceedings," Mohtar contended.

He further said it would be absurd to disqualify any judge appointed by the Prime Minister from hearing the case.

Mohtar said what was important was that whether the judge could discharge his duty impartially and the impression it gave to the minds of "disinterested parties".

So long as such parties believed that the judge was fair then the likelihood of bias on the part of the judge did not arise.

At this juncture Anwar's leading counsel Christopher Fernando said that his client was not well. Arifin asked Anwar about his condition and he said his head was aching and his body felt weak.

The judge agreed that he did not look well and, following Karpal's application, adjourned the proceedings, to tomorrow.