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Court to decide today on bid to recall SAC Musa

KUALA LUMPUR, Thurs. - The High Court will decide tomorrow whether to allow the defence in Datuk Seri Anwar Ibrahim's sodomy trial to recall the investigating officer.

Judge Datuk Arifin Jaka deferred decision today after hearing submissions by counsel for the respective parties.

Arifin will also make a ruling whether the officer, SAC1 Musa Hassan, should be recalled before or after Anwar and co-accused Sukma Darmawan Sasmitaat Madja testify, since the defence had started its case when it delivered its opening statements today before calling witnesses.

Anwar and Sukma, who is his adopted brother, are charged with sodomising former driver Azizan Abu Bakar in 1993.

Sukma, a businessman, is also facing a second charge of abetting Anwar to sodomise Azizan who is the former driver of Anwar's wife Datin Seri Dr Wan Azizah Wan Ismail.

The High Court had on Monday ordered them to enter their defence.

In applying to recall Musa, Karpal Singh said the defence wished to enlist his assistance to verify Anwar's alibi.

Counsel said Anwar's defence of alibi depended very much on the verification, otherwise he would be unable to put up an effective defence.

"It is in the best interest of all concerned if the alibi was verified for fear of a mistrial," Karpal Singh said when Arifin asked what clarification he was seeking from Musa.

Karpal Singh said he suspected that what was being done in the case was not in accordance with the law.

"Let's correct it at this stage and save the court from being embarrassed in the Court of Appeal later on," he said, pointing that the "error" could still be corrected at this stage.

Karpal Singh was referring to the court's earlier decision in backing the prosecution's contention in not allowing Musa to investigate Anwar's alibi although the officer had agreed to do so.

(Anwar had filed a notice of alibi before the commencement of the trial, but it became "invalid" when the prosecution amended the charges.

(The court had ruled then that it was unnecessary for the defence to put up another notice although the defence had "strongly" applied for one.

(The court had ruled that it would be the prosecution's funeral if it failed to challenge Anwar's (second) alibi, which was put through the cross-examination of prosecution witnesses.)

Attorney-General Tan Sri Mohtar Abdullah argued that the issue had been settled during the prosecution stage and the court had made its ruling and observations.

"On this point alone, there is no justification for the same application to be revived at the defence stage," he said.

Mohtar said there was no question of depriving the defence the right to verify their alibi, and if it could be borne out the prosecution might even discontinue the case.

However, under the circumstances of this case it was up to the prosecution to decide whether further verification was necessary since it was satisfied with the earlier verification.

"There is no necessity to recall SAC1 Musa to further verify a fact which has been dealt with in the prosecution case," he said.

Mohtar said the accused should start their evidence after the opening

statement by their counsel, after which they could recall any witness.

Earlier, Karpal Singh delivered an opening statement for the defence stating that it was "handicapped" by its inability to file a second notice of alibi following the "expiry" of the first one when the prosecution amended the charge.

Counsel said the defence intended to recall Musa to verify Anwar's second alibi. He dealt at length on the issue, directing the court's attention to what transpired during the prosecution case when the defence failed to get Musa to verify the second alibi.

Karpal Singh said the defence would call Prime Minister Datuk Seri Dr Mahathir Mohamad as its witness along with Finance Minister Tun Daim Zainuddin.

The defence would also call Domestic Trade and Consumer Affairs Minister Datuk Seri Megat Junid Megat Ayob, PM's political secretary Datuk Aziz Shamsuddin and former Inspector-General of Police Tan Sri Rahim Noor.

"We intend to demolish the evidence of (former IGP) Tun Hanif Omar, which we say is suspect."

In his opening statement, among other things, Sukma's counsel Gobind Singh Deo said the defence would adduce medical evidence to show that his client's confession was unreliable.

(Sukma had allegedly confessed to having a homosexual relationship with Anwar.)

Gobind Singh said the defence would also lead evidence on Anwar's whereabouts at the material time.

"The evidence on Datuk Seri Anwar's whereabouts on the particular dates in the charge will show that Sukma is not the criminal the prosecution expects us to believe," he said.

He said the defence would also show that Sukma was not a party to the allegations by Aziz.

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