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Court-Anwar

COURT TO DECIDE TOMORROW ON PM'S APPEARANCE

KUALA LUMPUR, Feb 17 (Bernama) -- The High Court here will decide tomorrow whether Prime Minister Datuk Seri Dr Mahathir Mohamad has to appear as a witness in his former deputy's sodomy trial.

Justice Datuk Arifin Jaka said he would decide whether Dr Mahathir had to personally apply to set aside the subpoena issued to him by the defence in the trial.

He said he would hear the relevancy issue raised by Senior Deputy Public Prosecutor Datuk Abdul Gani Patail yesterday after deciding on the matter.

"If I decide as such, I will direct the witness (Dr Mahathir) to put in an application (to set aside the subpoena) and if there is no need, I will proceed with Section 136 (of the Evidence Act 1950)," Arifin said.

The High Court judge said so after hearing submissions from both parties on preliminary issues raised by Datuk Seri Anwar Ibrahim's counsel when Gani who led the prosecution team applied to the court to invoke Section 136 which deals with relevancy before calling the Prime Minister as a witness in the trial.

Dr Mahathir was supposed to appear in court today based on the subpoena issued to him on October but the prosecution objected saying that the court had to decide on the relevancy issue before calling him to the witness stand.

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

Sukma, a businessman, faces another charge of abetting Anwar in sodomising Azizan, the former driver of Anwar's wife, Datin Seri Dr Wan Azizah Wan Ismail, at the same time and place.

He had applied to the court in October last year to issue subpoena to Dr Mahathir to appear as his witness.

Earlier, Anwar's counsel Karpal Singh told the court that Anwar also applied to call Dr Mahathir as his witness.

"We need Dr Mahathir's presence not as Prime Minister but as Dr Mahathir," he said.

Karpal said the defence subpoenaed Dr Mahathir in his personal capacity and the subpoena issued had nothing to do with the government.

The Prime Minister would have to appoint his own lawyer to set aside the subpoena, he said objecting to Gani's application that the court invoke Section 136 of the Evidence Act to decide whether Dr Mahathir's evidence was necessary for the case.

Karpal also said the Senior DPP had no locus standi to defend the Prime Minister.

He said Section 136 relied upon by the prosecution did not apply because it only touched on the admissibility of evidence and not to the calling of a witness.

"In this case, the subpoena has to be set aside but an application has to be made first. A person concerned must make the application and it is not for the prosecution or the defence to do so. Procedure has to be followed," he said.

Gani responded by saying: "I'm not acting for the Prime Minister. I'm acting as a DPP," adding that in this case there was necessity to make such

application (to set aside the subpoena) because the prosecution was requesting the court to look at that section.

Gani said the court must look at the question of relevancy when the defence proposed to call Dr Mahathir because in Sukma's case there was no evidence that would connect the Prime Minister to the accused.

"No evidence has been shown that the Prime Minister is a material witness in the sodomy act. He was not at the scene, he was never there. Nothing," said Gani, who earlier told the court that the prosecution was objecting to Sukma's calling the Prime Minister.

He said the court had the power and in fact was duty bound under the Evidence Act to ask the defence on the relevancy of the Prime Minister's evidence.

Karpal said the defence has the every right to adduce any evidence from now on and it was not for the court to ask what evidence Dr Mahathir was going to give,

"It is between us and the PM and not for the prosecution to say Dr Mahathir cannot give any material evidence," he said.

Karpal contended that there was no statement recorded from Dr Mahathir and that the principal witness in the case, Azizan Abu Bakar had confirmed that he had met the Prime Minister.

"On that score alone, there is more than sufficient material to call him," he said.

Gani said the court must decide on the relevancy issue as there was no use for it to allow a witness to give irrelevant evidence then subsequently expunge it from the record after ruling it inadmissible.

In the morning session, the court proceeded to hear evidence from Anwar's former ADC, DSP Zull Aznam Harun who was cross-examined by Senior DPP Datuk Azahar Mohamed.

Although Azahar yesterday informed the court that he would apply to impeach Zull's credibility, he did not proceed with the impeachment proceeding today.

Azahar told the court yesterday that the prosecution would consider whether it should challenge the admissibility of Zull's evidence in court which Azhar said had contradicted his statement to the police.

Re-examined by counsel Christopher Fernando, Zull said had he been asked by the police about what Azizan had told him, he would obviously informed them when making the police statement.

-- BERNAMA
SBB NHD RYN