

Anwar to testify tomorrow in mini-trial
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The High Court in Kuala Lumpur today allowed the defence application for a trial-within-a-trial to determine the admissibility of three items proffered as evidence by the prosecution in its sodomy case against Anwar Ibrahim.

Justice Mohamad Zabidin Mohd Diah fixed 2.30pm tomorrow for the matter to be heard. The parliamentary opposition leader and de facto PKR leader will testify as the first witness for the defence.

Malaysiakini will continue its live coverage of the crucial hearing on the admissibility of the three items the prosecution wants to tender as evidence - a water bottle, a hand towel and a toothbrush.

This will be the first time Anwar will take the stand in this trial, the second involving the former deputy premier. He is expected to testify on the basis that his arrest was unlawful.

The police responsible for court security have already advised reporters to come early tomorrow.

Today's application was heard before a packed public gallery, made up mostly of journalists, Anwar's family members and supporters.

Among those present were Anwar's wife and PKR president Dr Wan Azizah Wan Ismail, PKR secretary-general Saifuddin Nasution Ismail, who is also Machang MP, Subang Jaya MP R Sivarasa and Petaling Jaya Selatan MP Hee Loy Sian.

In allowing the trial-within-a-trial, Justice Zabidin said generally, the court would not be concerned about how the evidence was obtained.

However, he said, the court has the discretion to exclude relevant admissible evidence if there are allegations that improper and unfair means were used to obtain it.

"In my humble view, the only way to determine this is through a trial-within-a-trial," he said after hearing 70 minutes of arguments from the defence and prosecution

"Hence, I am allowing the defence application. The trial-within-a-trial will be held tomorrow."

The development followed a dispute over the admissibility of the mineral water bottle, a Good Morning towel and a white toothbrush.

The mini-trial is seen as a pivotal moment in the Sodomy II hearing as the admissibility or non-admissibility of the items as evidence can make or break the prosecution's case

The three items have been marked as "identification" items, not as evidence. When anything raised in a trial is not marked as evidence, the court will not give any weight to testimony on it.

A trial-within-a-trial (voir dire) is where the judge conducts an inquiry into the admissibility of an item of evidence. Normally, this is done with confessions by accused persons, but can be extended to the objects offered as evidence.

Sankara: Other witnesses may be called

Sankara told reporters after today's proceeding that the defence team would study whether other witnesses should be called to testify in the trial-within-a-trial.

"We will consider this possibility tonight," he said, adding that Anwar would have to take the stand first "as we are putting forward our case".

Anwar in his evidence will have to stick to his claim of illegal arrest and unlawful gathering of evidence, namely the mineral water bottle, toothbrush and towel.

The prosecution is likely produce the arresting officers, including investigating officer DSP (now Supt) Jude Blacious Pereira. In a criminal trial, the investigating officer is usually the last witness for the prosecution.

In his submission earlier, senior defence counsel Karpal Singh argued that the items offered as evidence were unfairly and illegally obtained as Anwar had been unlawfully arrested.

"Hence, those items should remain as ID (identification) and excluded as evidence," he said.

This is because, Karpal said, the items were secured through unlawful means, or that unlawful methods were employed by police to get them, and he cited a Privy Council ruling that the court and judges must ensure that an accused gets a fair trial.

"The court must protect the accused from evidence gained in an oppressive manner," said Karpal, adding that the judge had no other option on items obtained through improper or unlawful means.

Evidence should be admitted if relevant

Solicitor-General II Mohd Yusof Zainal Abiden said the court should admit an item as evidence if it was relevant.

Whether a person gave the item voluntarily or involuntarily was not an issue, Yusof (left) said, as what the prosecution was trying to have admitted as evidence was not a confession.

The evidence adduced in court had strengthened the prosecution's case and confirmed the guilt of the accused, he said, adding that the cases cited by Karpal were related to confession.

"We are not dealing with confession, but admission to (ownership of the) items," he said, and argued that the question of somebody's mind being influenced (to give up) items of evidence did not arise.

Yusof also submitted that if there was a question about the evidence proffered by the prosecution, then the trial-within-a-trial should be held at the end of the prosecution's case, before judgment is delivered.

"This will prevent a lengthy trial," he said.

Later in the day, Yusof told Malaysiakini that the prosecution will not appeal Justice Zabidin's decision to hold the trial-within-a trial

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