

Karpal: Court can't direct Anwar to give DNA sample
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Lead counsel Karpal Singh submitted the court cannot practise judicial activism in directing Anwar Ibrahim to give samples for DNA profiling.

He said Section 62 of the Police and Criminal Evidence Act 1984, which concerns evidence, only provides for the police to take intimate samples with safeguards, including consent to be given by the suspect.

"Section 62 of the Act does not empower the court to direct an accused person in an on-going trial to give samples for DNA purposes," he said.

"Section 165 of the Evidence Act 1950 (which the prosecution is applying) limits judicial intervention in a trial. Of course, the unprecedented application for Yang Arif to direct Anwar to give samples for DNA profiling is unheard of and unprecedented in the Commonwealth and perhaps elsewhere," Karpal (right) said.

Judicial activism, he said, has its limits.

Karpal was submitting in the reply to the prosecution's application for a review of the trial-within-a-trial ruling, which bars the prosecution from admitting the three items which had been rejected by the court (the toothbrush, towel and mineral water bottle), and to compel Anwar to give his sample.

'Prosecution's application misplaced'

Karpal said the prosecution's application under Sections 73 and 165 of the Evidence Act is misplaced.

"Section 73 is concerned with comparisons of signature, writing or seal whereby the court can direct any person to write any words or figures for the purpose of enabling the court to compare... In our case, the learned deputy public prosecutor has presumed the DNA evidence sought to be adduced has been proven, when it has not been.

"Section 165 provides for the power of a judge to put questions or order production of a document or thing. Section 73 and section 165 cannot by any stretch of the imagination empower a court to direct an accused to provide samples for DNA profiling."

Under the circumstances, Karpal said both applications by the prosecution ought to be dismissed as being a manifest abuse of court.

'Have Anwar make available his specimen'

Solicitor-general II Mohd Yusof Zainal Abiden, in reply, said although the Evidence Act points to fingerprints and handwriting, the DNA is closest to such a test.

"Let justice be done so the court can obtain the truth. We recovered DNA from (Mohd Saiful Bukhari Azlan's) anus and we need to compare it - this is why we invite the court to have Anwar make available his specimen.

"The court can invoke in using sections 73 and 165 if there is proper evidence," he said.

Karpal pointed out that the Evidence Act does not give power for a test to be done without consent.

"The court cannot play the role of the legislature in substituting the handwriting and fingerprint to include DNA," he said.

Justice Mohamad Zabidin Mohd Diah said he certainly needs time before making a decision.

"I will give my decision on Wednesday," he said.

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