

Prosecution drops objection to Anwar transferring case

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By Hafiz Yatim

The prosecution in the Peaceful Assembly Act trial against Anwar Ibrahim made an about-turn in the sessions court in Kuala Lumpur today and dropped its objection to the opposition leader's application that the High Court hears a constitutional question on his charge.

The application was made on one of the three charges against Anwar that he faces related to the Bersih 3.0 rally on April 28 this year.

Anwar has also applied to the sessions court to strike out the other two charges against him under the Penal Code.

Head of prosecution at the Attorney-General's Chambers Abdul Wahab Mohamad said the prosecution was withdrawing the initial objection it raised to the Permatang Pauh MP's application during the last hearing.

"After doing some reference on the application, we withdraw the objection and agree that the matter be referred to the High Court," Abdul Wahab told sessions judge Mahmud Abdullah.

Also in the prosecution team with Abdul Wahab are deputy public prosecutors Mohd Hanafiah Zakaria and Ishak Mohd Yusof.

Anwar, through his lawyer Karpal Singh, had on Sept 3 applied for the PAA charge against him to be heard before the High Court, arguing that Section 4(1) (c) of the PAA conflicted with Article 10 (1) of the federal constitution on the freedom of assembly.

This was because the charge against Anwar involved his constitutional right to assemble freely and since the interpretation of matters related to the federal constitution were involved, the matter should be heard by the High Court, since the lower courts have no jurisdiction to interpret the constitution.

PKR deputy president and Gombak MP Azmin Ali also filed similar applications to strike out the same charges against him, on Tuesday and today.

Azmin's lawyers CV Prabhakaran and Gurcharan Singh indicated that besides the striking out applications, they also adopted Karpal's arguments on the constitutionality issue and want the matter heard by the High Court.

Meanwhile, K Murali Dharan, lawyer for the third accused, former PKR supreme council member Badrul Hisham Shahrin, who is also known as Chegubard, told the sessions judge that they were withdrawing the two applications filed in the court on Tuesday.

Murali said they would file the applications afresh before the High Court.

Oct 31 hearing of Penal Code charges

Abdul Wahab then said following Azmin's applications, which were only served on the prosecution today, they have to reply via an affidavit.

"Following this, we apply for another date for a hearing on the defendants' applications to strike out the Penal Code charges," he said.

Earlier, sessions judge Mahmud questioned whether he had inherent powers to review magistrate Zaki Asyraf Zubir's April 26 order barring people from gathering in the vicinity of Dataran Merdeka for the Bersih 3.0 gathering of April 28.

Prabhakaran and Abdul Wahab said the court has the power to hear the matter and following this, Mahmud fixed Oct 31 for hearing of the applications on the Penal Code charges.

Anwar, Azmin and Badrul Hisham are charged with violating Section 4 (2)(c) of the PAA by taking part in the Bersih 3.0 rally and thereby, between 2.30pm and 3pm on April 28, violated the court order issued by magistrate Zaki.

If found guilty on the first charge, all three are liable to a maximum fine of RM10,000 each.

They also face a second charge under Section 188 of the Penal Code, for breaching the magistrate's order by conspiring with Rasah PKR division deputy head R Tangam, lawyer G Rajesh Kumar and van driver Farhan Ibrahim @ Alias by inciting them to breach the barricades surrounding Dataran Merdeka, which 'could have caused a riot or clashes'.

If convicted, under this section, they will face a maximum jail term of one month or a fine of RM2,000 or both.

The third charge against the three is on abetting in rioting under Section 147 of the Penal Code, by inciting the others to break the barricades at Dataran Merdeka. If convicted under this section, Anwar, Azmin and Badrul Hisham will face a two-year jail term or a fine or both.