

**Decision nears for Karpal's application for notes**  
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The Kuala Lumpur High Court has fixed Nov 22 to deliver its decision on whether or not it would allow Anwar Ibrahim's defence application to possess the clinical notes of Hospital Kuala Lumpur's (HKL) three-hour examination on Mohd Saiful Bukhari Azlan.

It also scheduled the same date to decide on another application to deny the admissibility of the chemist's report of July 11, 2008, following a toxicology report which was attached to it but was not handed over to the defence.

NONEThe dates were fixed by Justice Mohamad Zabidin Mohd Diah, following submissions from both the defence and the prosecution.

Lead counsel Karpal Singh (left) submitted that the defence could make the application for the clinical notes following the Federal Court's decision that it could ask for any document during the course of the trial.

"The court has a wide latitude given by the Federal Court to grant our application. The defence has similar rights to make the application. The expert (Dr Mohd Razali Ibrahim) is here to tell the truth and the court must ensure this is so."

He said the defence was making the application as the credibility of Dr Razali had been brought into question and the defence needs the notes to prove this.

Karpal said the defence has a hunch there is such a discrepancy, and cited an Indian case law to back the argument to submit the application to have the notes.

"We want to know the patient's history. It cannot just be a two-liner as stated in the final medical report dated July 13, 2008," he told the court.

"Even a kindergarten kid can tell a two-liner is not a detailed report. Hence, the court should provide us with the clinical notes for us to prove and possibly challenge the witness' testimony. Your lordship will be seen as sitting and doing nothing about it if the defence application is not allowed."

Karpal also submitted that as the defence was not provided with the toxicology report as required under Section 51 of the Criminal Procedure Code, the whole chemist's report should be ruled as inadmissible.

"We have been denied our right. Yang Arif (Your Honour) can't just sit back and not do anything about it."

If the documents, he said, are not admitted in its entirety then the whole chemist's report should be rejected.

The prosecution's case

Solicitor-general II Mohd Yusof Zainal Abiden said the present trial was at stage of the prosecution's case, and it is up to it to choose which documents to be tendered. "It is not the defence case yet. What is important is the experts' evidence, and not the notes."

NONEYusof (right) said unlike Indian courts, Malaysian court do not enjoy wide latitude to grant such a request.

"In a murder case, only the final post-mortem report is submitted. Post-mortem notes are not," he said, adding the defence submission that the court had wide latitude was wrong.

"Furthermore, the witness (Dr Razali) did not apply to look at the notes. There is no application before the court for the witness to look at the clinical notes. You cannot force the witness if he does not want to."

Pointing out that defence cannot act merely on a hunch, the solicitor-general II said they must show material contradiction and discrepancy to justify their application.

"So far, the defence has not shown any material contradiction or unexplained circumstances (to ask for the clinical report) and challenged Dr Razali's testimony."

On the chemist's report, Yusof said it has not prejudiced Anwar.

"The chemist had yet to be called to give her evidence, and the report itself has not been marked as an exhibit (evidence). Furthermore, the toxicology report has nothing to do with the witness and hence, that is why we did not submit it," he said.

Summing-up, Yusof said the witness did not apply to see the clinical report and furthermore, the defence has yet to show any material contradictions to prove their hunch.

"Furthermore, the defence cannot compel the prosecution to do so. Hence, we apply that the court dismiss both applications."

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