

Sodomy trial : Anwar wins first round
Malaysiakini.com
Oct 7, 2008
Beh Lih Yi

The Kuala Lumpur Sessions Court today ruled in favour of Opposition Leader Anwar Ibrahim and decided that his sodomy trial would be heard in the same court.

Delivering the ruling this afternoon, judge SM Komathy Suppiah told a packed courtroom that the transfer order signed by Attorney-General Abdul Gani Patail was invalid.

"This case raises a unique situation where it is evident that any involvement by the AG in this case would seriously undermine public confidence in the administration of criminal justice.

"That is the compelling and overriding factor that warranted the Prime Minister's (Abdullah Ahmad Badawi) promise which this court is prepared to uphold," she said in referring to Abdullah's previous assurance that the AG will not be involved in the sodomy case.

Justice Komathy however stressed that her decision was not in any way detract or impinge on the absolute authority the AG enjoys under the Federal Constitution in the institution and conduct of criminal prosecutions.

The court later fixed next Friday for mention of the case.

The decision will pave the way for the sodomy trial to begin - three months after Anwar claimed trial after being charged with sodomising his former aide, Mohd Saiful Bukhari Azlan, 23.

If convicted, he could face up to 20 years in jail. He is currently out on a RM20,000 personal bond.

PM 'intended to be taken seriously'

Reading out her 16-page judgment earlier, Justice Komathy dismissed the arguments cited by the prosecution including that her court was bound to transfer the case based on precedents.

The prosecution had cited a decision in PP v Yap Peng to argue that the judge has "no choice" but to transfer the case once an application was made by the prosecution.

"The facts in Dato Yap's case are clearly distinguishable from the facts in the present case. In that case, the head of the executive did not give any promise," said the judge, whose voice was slightly cracking when she started reading out the judgment.

Responding to prosecution's argument that Abdullah's assurance was not binding on the AG, the judge said the premier had given his word "and intended to be taken seriously".

"I must at once say that the solemn words of the head of the executive of this country on specific and serious matters such as those complained of in this case, cannot be trifled with.

"On the contrary, the prime minister must have given the matter due consideration and must have had the overriding interest of justice and due process of law in giving his word that the AG would play no part in this case," she said.

Arguing against the transfer previously, the defence's objection was on the basis that the premier had publicly assured the AG will not play any role in this case as he is being investigated for allegedly having tampered with evidence in Anwar's trials 10 years ago.

In their submissions, the prosecution however had said Abdullah was "not in the position" to provide such assurance and therefore it was not binding on Abdul Gani.

The prosecution added that the prime minister being also a politician could have given the promise to please the people he was addressing.

With the premier's assurance, the judge ruled it created a legitimate and reasonable expectation in Anwar and the public that Abdul Gani will not be personally involved in the case.

Justice Komathy also said since the AG was exercising a quasi judicial power when he signed the transfer certificate, "the rule against bias would disqualify him from issuing the certificate".

"For the reasons I have stated, I find the certificate to be invalid.," she said.

In an immediate response to the ruling, chief prosecutor Mohd Yusof Zainal Abiden told reporters that the prosecution will appeal and seek a revision on the court's ruling today.

Anwar is 'very pleased'

Met outside the courtroom later, an elated Anwar said he was "very pleased" with the decision.

"From the outset, I have maintained that the entire case against me is politically-motivated using a small group of police officers and the AG.

"I am pleased that the judge took pain to hear arguments from both sides and kept to her principle and will see the course of action from the prosecution after this," said Anwar, who is also the Permatang Pauh MP.

Anwar was accompanied by his wife, Dr Wan Azizah Wan Ismail and the couple's four daughters in court today, including their eldest daughter Lembah Pantai MP Nurul Izzah.

Scores of party leaders and supporters were also present in the courtroom to follow the proceedings, including Ampang MP Zuraida Kamaruddin and Teluk Kemang MP Kamarul Bahrin Abbas.

That would put paid to a Malaysian vision.

Copyright © 1999-2007 Mkini Dotcom Sdn. Bhd.

Source : <http://www.malaysiakini.com/news/92650>