

Karpal Responds To Demand For DNA Sample
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KUALA LUMPUR -- Anwar Ibrahim's defence team wants the court to dismiss the prosecution's applications to review a decision which had thrown out three samples seen as crucial evidence in the prosecution's case, and an order for Anwar to provide his DNA samples, on grounds that they were an abuse of the court process.

Counsel Karpal Singh, in his submission, said Sections 73 and 165 of the Evidence Act 1950, under which the applications were made, did not empower the court to direct an accused to provide samples for DNA profiling.

He said Section 73 refers to comparisons of signatures, writings or seals, in which the court could direct any person to write any words or figures to enable the court to make comparison.

"Section 73 is applicable to finger impressions, but in this case, the prosecution has presumed that the DNA evidence sought to be adduced has been proven, when it has not been," Karpal Singh argued.

He said Section 165 provides for the power of a judge to put questions or order the production of documents.

"Section 73 and 165 cannot, by any stretch of the imagination, empower a court to direct an accused to provide samples for DNA profiling," Karpal Singh said.

He added that Section 165 limits judicial intervention in a trial, and argued that the prosecution's application was unprecedented and unheard of in any commonwealth countries and contended that judicial activism had its limit.

Karpal Singh said that parliament had even passed the Deoxyribonucleic Acid (DNA) Identification Act 2009, but had yet to be enforced.

He argued further that even Section 62 of the Police and Criminal Evidence Act 1984 only provides for the police to take intimate samples with safeguards, including consent to be given by the suspect.

"Section 62 does not empower the court to direct an accused person in an ongoing trial to give samples for DNA (analysis)," he said.

Anwar, 63, is charged with sodomising his former personal aide, Mohd Saiful Bukhari, 25, at the Desa Damansara Condominium in Bukit Damansara between 3.01pm and 4.30pm on June 26, 2008.

On the review applications, Karpal Singh said even though the court can review its own ruling, its must have compelling evidence, adduced after a trial-within-a-trial, for the judge to review his decision, unlike in the current case.

He said from the court's ruling -- excluding three items namely a mineral water bottle, a morning towel and a toothbrush -- it was clear that the items were obtained by unfair

means.

"It was by trick and deception that the police attempted to introduce the DNA evidence," added Karpal Singh.

He said even the testimony of Investigation Officer Supt Judy Blacious Pereira confirmed that there had been non-compliance with Lock-up Rule 1953.

Furthermore, arresting officer Supt Ahmad Taufik Abdullah also confirmed that the ground of arrest was not given to Anwar when he was arrested on July 16, 2008 in Segambut, he said.

In his reply, Solicitor-general II Mohamed Yusof Zainal Abiden said even though the defence contended that its applications were "rare", the court could still invoke both sections in allowing them.

Meanwhile, Karpal Singh filed an verbal application for the court to cite for contempt all those who made press statements about compelling Anwar to provide samples for DNA analysis.

He said the court already issued cautions on this matter but statements were still being made.

Justice Mohamad Zabidin Mohd Diah said if Karpal Singh was serious on the matter, he should pursue it by making a formal application.

He then set Wednesday to decide on the two applications.

(Bernama)

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