

Anwar sodomy trial: Defence won't get documents

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(The Star) - It's back to square one for Opposition leader Datuk Seri Anwar Ibrahim after the Court of Appeal overturned the High Court's decision compelling the prosecution to provide him with documents and DNA samples he said were crucial for his defence in a sodomy trial.

In a unanimous decision Friday, Justices Hasan Lah, Abu Samah Nordin and Sulaiman Daud allowed the prosecution's appeal against the High Court decision and dismissed Anwar's cross appeal.

In doing so, the prosecution will no longer need to provide Anwar with any of the key documents as ordered by the High Court.

Justice Hasan Lah, in handing down the court's ruling, said that the bench disagreed with the High Court's interpretation of Section 51A of the Criminal Procedure Code (CPC), which formed part of the basis for the order.

He ruled that the documents and evidence Anwar had applied for did not fall under the purview of Section 51A, and that there were still limitations to the documents provided to a defendant pre-trial.

"In a criminal proceeding, the law does not allow a fishing inquiry," he said.

Section 51 of the CPC authorises that documents or things which are necessary for the purpose of the trial may be ordered to be produced.

Section 51A, an extension of Section 51 when the Act was amended in 2006, pertains to the delivery of more documents to the accused pre-trial.

Among the documents and evidence Anwar was seeking for him to prepare his defence were CCTV recordings, medical reports from Hospital Kuala Lumpur and Hospital Pusrawi, chemist's notes, the prosecution's witness list and statements, and DNA samples taken from complainant in the case, Mohd Saiful Bukhari Azlan.

On July 16, Kuala Lumpur High Court judge Justice Mohamad Zabidin Mohd Diah had granted Anwar's application to obtain certain documents, including copies of witness statements, CCTV recordings and police reports, to prepare his defence, and directed the prosecution to comply with the order within a week.

However, the court dismissed Anwar's application to get the DNA samples.

On July 24, Justice Mohamad Zabidin granted a stay on his ruling pending the prosecution's appeal in the Court of Appeal. Anwar also filed a cross-appeal for the DNA samples.

Speaking to reporters later, Anwar's lead counsel Karpal Singh said they would file an appeal with the Federal Court on Monday.

"This is a matter of interpretation of Section 51A. Let the apex court decide.

"What is important to note is that this case sets a precedence and will affect all criminal cases," he said.

Anwar also has an appeal pending in the Federal Court against the Court of Appeal's dismissal of his preliminary objection to the prosecution's appeal in the appellate court. Karpal said they would apply for both matters to be jointly heard. On March 10, Anwar, 62, had claimed trial to sodomising his former personal aide Mohd Saiful, 24, at a condominium in Bukit Damansara here on June 26, last year.